

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MISS JUSTICE EDWARDS JA
THE HON MRS JUSTICE FOSTER-PUSEY JA
THE HON MR JUSTICE LAING JA**

SUPREME COURT CIVIL APPEAL COA2022CV00011

BETWEEN	CLAUDIA CUNNINGHAM	APPELLANT
AND	COMMISSIONER OF POLICE	1ST RESPONDENT
AND	ATTORNEY GENERAL OF JAMAICA	2ND RESPONDENT

Hugh Wildman and Shemar Bryan instructed by Hugh Wildman & Co for the appellant

Ms Faith Hall instructed by the Director of State Proceedings for the 1st and 2nd respondents

17, 18, 21 February and 28 March 2025

Administrative law - Dismissal of constable by the Commissioner of Police - Whether the dismissal was null and void due to failure of the Commissioner to first obtain the recommendation of the Police Service Commission and to personally inform the constable of the dismissal – Whether the Commissioner was not authorised to give the constable notice of refusal of application for reinstatement – Whether the Commissioner had a duty to advise the constable of right of appeal to the Governor-General – The Jamaica Constabulary Force Act, s 5 – The Police Service Regulations, regulation 38 – Constitution of Jamaica, s 131(4)

Civil appeal – Findings of fact – Approach of appellate court – Reluctance to interfere with findings of fact

EDWARDS JA

[1] I have read, in draft, the reasons for judgment of Laing JA and agree that they accord with my own reasons for concurring with the order reflected in para. [7] below.

FOSTER-PUSEY JA

[2] I too have read the draft reasons for judgment of Laing JA. They accord with my reasons for concurring with the order made by the court.

LAING JA

[3] By notice of appeal filed on 1 February 2022, Miss Claudia Cunningham (‘the appellant’) appealed against the decision of Wolfe-Reece J (‘the learned judge’) contained in a written judgment, with neutral citation [2022] JMSC Civ 11 and delivered on 28 January 2022 (‘the judgment’). The notice of appeal stated that the details of the order[s] appealed are:

“a. The [Appellant’s] claim that she was never dismissed by the Commissioner of Police as a member of the Jamaica Constabulary Force and that she remains a serving member of the Jamaica Constabulary Force is refused.

b. Cost to the [Respondents], to be taxed if not agreed.”

[4] By her fixed date claim form (‘the FDCF’), filed on 25 September 2019, the appellant claimed the following relief:

- “1. A Declaration that the [appellant] could only have been legally dismissed from the Jamaica Constabulary Force by the Commissioner of Police exercising the powers under the Jamaica Constabulary Force Act not to reenlist the [appellant] at the end of her service under section 5 of the Jamaica Constabulary Force Act.
2. A Declaration that only the Commissioner of Police can legally terminate the Service of the [appellant] as a Constable of the Jamaica Constabulary Force.
3. A Declaration that the Commissioner of Police has taken no steps pursuant to Section 5 of the Jamaica Constabulary Force Act to terminate the [appellant] as a serving member of the Jamaica Constabulary Force.
4. A Declaration that the [appellant] remains a Constable within the Jamaica Constabulary Force, having been

appointed pursuant to section 5 of the Jamaica Constabulary Force Act.

5. Such further and other relief as this Honourable Court thinks fit.
6. Cost [sic] to the [Appellant]”

[5] It was not contested that at the hearing counsel for the appellant applied for and was granted an amendment of the FDCF to seek an additional declaration, the terms of which are reflected in para. [2] of the judgment as follows:

“A Declaration that the [Respondents] were/(are) not permitted to dismiss the [appellant] from the Jamaica Constabulary Force by section 38 of the Police Service Regulations without strict compliance of [sic] section 131 (4) of the Constitution of Jamaica.” (Italics as in the original)

[6] The learned judge refused to grant any of the declarations sought by the appellant and gave her reasons in the judgment.

[7] On 21 February 2025, after considering the oral and written submissions of counsel, we made the following orders:

- “1. The appeal is refused.
2. No order as to costs.”

[8] At that time, the court promised to put its reasons for the decision in writing. This is in fulfilment of that promise.

Brief background

[9] The background is briefly stated as most of it is not relevant to the case before us. The appellant enlisted in the Jamaica Constabulary Force (‘the JCF’) on 12 March 1993. In January 1998, the appellant’s firearm was found in the possession of her companion, who was standing beside her car. Her companion was charged with illegal possession of a firearm and ammunition and she was charged, on 28 February 1998, with aiding and abetting the illegal possession of a firearm and ammunition.

[10] On 9 March 1999, the case against the appellant was dismissed for want of prosecution. However, this was not a final disposition of the case, and it was again placed before the court. On 21 August 2002, the appellant pleaded guilty to two counts on an indictment preferred against her, the first for aiding and abetting illegal possession of a firearm and the second, for aiding and abetting illegal possession of ammunition. The appellant was sentenced to a fine and in default of payment, with imprisonment on each count respectively. She was placed on suspension effective 21 August 2002.

[11] The appellant's period of enlistment was due to expire in March 2003, and in January 2003, the appellant applied for re-enlistment for a period of five years. The appellant was dismissed from the force pursuant to regulation 38 of the Police Service Regulations ('regulation 38'), and her dismissal was published in Force Orders dated 3 April 2003.

[12] By letter dated 14 July 2003, the appellant wrote to the Commissioner of Police in respect of her dismissal and enlisted the support of the Public Defender, who wrote to the Commissioner of Police, by letter dated 17 July 2003, inviting the Commissioner of Police to reconsider the appellant's dismissal. The appellant also secured the assistance of the Jamaica Police Federation ('the Police Federation'), which met with the Commissioner of Police. Additionally, the Police Federation advocated on the appellant's behalf and requested a pardon from the Governor General pursuant to section 90(1)(a) of the Constitution. The appellant also wrote a letter to the then Prime Minister, the Honourable Bruce Golding, seeking his intervention, and he passed her letter to the Office of the Commissioner of Police, which elicited a response to the Prime Minister by letter dated 13 May 2008.

[13] None of these efforts resulted in an outcome that was favourable to the appellant. She persisted in her efforts and, by a letter dated 12 November 2010, her then counsel wrote to the Commissioner of Police "with regards to the unfair and unwarranted dismissal" of the appellant and sought audience with the Commissioner of Police at the earliest convenience. The Commissioner of Police responded by a letter, dated 15 August

2011, in which he indicated that he had considered the request and concluded that there was no basis on which to have an audience to review the dismissal of the appellant.

The grounds of appeal

[14] The appellant filed six grounds of appeal as follows:

- a. The Learned Trial Judge erred in law in failing to appreciate that, on the evidence, there is nothing to show that the Appellant was ever served with a termination notice by the Commissioner of Police, pursuant to a recommendation from the Police Services Commissions [sic] under **Section 38** of the **Police Services Regulations**.
- b. The Learned Trial Judge erred in law in failing to appreciate that, in the absence of any evidence that the Commissioner of Police personally informed the Appellant that she was dismissed from the Jamaica Constabulary Force then she remains [sic] a lawful member of the Jamaica Constabulary Force.
- c. The Learned Trial Judge erred in law in failing to appreciate that **Section 38** of the **Police Services Regulations** must be read in conjunction with **Section 131 (4)** of the **Constitution**, which allows for the Appellant to petition the local Privy Council as to the reason why she should not be dismissed from the Jamaica Constabulary Force.
- d. The Learned Trial Judge erred in law in failing to appreciate that, in the absence of the Appellant being so informed by the Commissioner of Police, that she was entitled, if she may, to petition the local Privy Council, to state why she should not be dismissed from the Jamaica Constabulary Force, any purported action pursuant to **Section 38** of the **Police Services Regulations** is illegal, null and void and of no effect.
- e. The Learned Trial Judge erred in law in failing to appreciate that the action of the Police Federation to petition the Governor General after the purported dismissal of the Appellant from the Jamaica

Constabulary Force for a pardon, does not comport with **Section 131 (4)** of the **Constitution**.

- f. The Learned Trial Judge erred in law in failing to appreciate that, nothing done by the Police Federation, ostensibly on behalf of the Appellant, could be ascribed to that [sic] of the Appellant.
- g. The Learned Trial Judge erred in law in failing to appreciate that, in the absence of compliance with **Section 131 (4)** of the Constitution, any purported dismissal of the Appellant from the Jamaica Constabulary Force is illegal, null and void and of no effect." (Emphasis as in the original)

The submissions of the appellant

[15] Mr Wildman contended that although the FDCF, as originally filed, emphasised the matter of the appellant's re-enlistment, at the time of the hearing of the FDCF, the issue of her dismissal had been raised because the Commissioner of Police was contending that she had been dismissed by virtue of regulation 38.

[16] Before this court, he submitted that regulation 38 is closely connected to section 131(4) of the Constitution of Jamaica. He further submitted that because an individual has a right to seek a review of a dismissal under regulation 38 by engaging section 131(4) of the Constitution, any purported dismissal pursuant to regulation 38 will be on hold until section 131(4) is played out. On the foundation of these submissions, he built the argument that the appellant was not formally notified of her dismissal and, accordingly, was deprived of her constitutional right to invoke section 131(4). He explained that this was the contention of the appellant that necessitated the amendment to the FDCF.

[17] Mr Wildman maintained that the issue of whether the appellant was given proper notice of her dismissal was an issue which fell for the determination of the learned judge. However, notably, Mr Wildman did not assert that he raised these arguments using similar language and reasoning before the learned judge. He argued, that insofar as that issue was resolved by the learned judge based on the evidence before her, she erred in her conclusion that the appellant received notice of her termination.

The submissions of the respondents

[18] Ms Faith Hall, on behalf of the respondents, submitted that the judgment should be viewed in the light of the amended fixed date claim form and the submissions made by counsel for the appellant before the learned judge. Ms Hall explained that the main emphasis of counsel for the appellant was concentrated on the declarations that were sought in the FDCF as originally filed. Counsel said that the appellant emphasised in particular, that only the Commissioner of Police could legally terminate the service of the appellant as a Constable, and he not having done so pursuant to section 5 of the Jamaica Constabulary Force Act, the appellant remained a member of the JCF.

[19] Counsel asserted that the judgment reflects the arguments that were advanced by the appellant and that the conclusions reached by the learned judge were sound in law. Counsel submitted that the learned judge was correct in her assessment of the evidence, and in concluding that the appellant was served with a notice of her dismissal. Counsel highlighted the evidence to which the learned judge referred in reaching that conclusion. These constituted findings of fact on the evidence, and the authorities are clear that this court should be hesitant to interfere with such a finding except where the learned judge was plainly wrong. Counsel posited, without any authority, that in any event, as a matter of construction of regulation 38, the dismissal procedure it established did not require that the appellant be formally notified by a letter in order to be effective. She argued that what was necessary was that the appellant be "made aware" of her dismissal and on her evidence, she was told by a colleague that her dismissal was published in the Force Orders.

[20] Ms Hall advanced the argument that the learned judge was correct in her interpretation of regulation 38 and in her conclusion that a dismissal pursuant to this regulation was not dependent on section 131(4) of the Constitution. Counsel argued that this conclusion was sound because section 131(4) did not impose any procedural requirement on the dismissal process under regulation 38, save to the extent that section 131(4) may be engaged after the dismissal or other disciplinary action had been ordered.

Counsel also noted that the procedure for a pardon pursuant to section 90 of the Constitution was distinct from the process of engaging the Governor-General under section 131(4) and that the judgment of the learned judge demonstrated that the learned judge was well aware of this.

[21] Ms Hall contended that the additional declaration sought by the amendment did not raise for the consideration of the learned judge, the argument now being advanced by the appellant, which is that because she did not receive notice of her dismissal, she was deprived of the opportunity to pursue her remedy to which she was entitled under section 131(4) of the Constitution. Counsel argued that the additional declaration was sought on the misconceived view held by the appellant, that the power of the Commissioner of Police to dismiss the appellant from the JCF was subject to a procedure for dismissal established by section 131(4) of the Constitution and that this was not complied with by the Commissioner of Police. Counsel posited that the true effect of this section is that it provides a right of appeal to the Privy Council, in circumstances where the dismissal is done by a person or authority other than the Governor-General acting on the advice of the Police Service Commission, and it was for the appellant to decide whether she wished to exercise that right. Accordingly, it was contended that the learned judge was correct in the construction she placed on this section and the conclusion she arrived at in para. [48] that the declaration (that was being sought by the amendment) was misguided.

Ground a -The Learned Trial Judge erred in law in failing to appreciate that, on the evidence, there is nothing to show that the Appellant was ever served with the termination notice by the Commissioner of Police, pursuant to a recommendation from the Police Services Commissions [sic] under Section 38 of the Police Services Regulations.

Ground b- The Learned Trial Judge erred in law in failing to appreciate that, in the absence of any evidence that the Commissioner of Police personally informed the Appellant that she was dismissed from the Jamaica Constabulary Force, then she remains a lawful member of the Jamaica Constabulary Force.

Ground f- The Learned Trial Judge erred in law in failing to appreciate that, nothing done by the Police Federation, ostensibly on behalf of the Appellant, could be ascribed to that [sic] of the Appellant.

Ground d- The Learned Trial Judge erred in law in failing to appreciate that, in the absence of the Appellant being so informed by the Commissioner of Police, that she was entitled, if she may, to petition the local Privy Council, to state why she should not be dismissed from the Jamaica Constabulary Force, any purported action pursuant to Section 38 of the Police Services Regulations is illegal, null and void and of no effect.

[22] Grounds a, b, f, and d, were related grounds and could conveniently be dealt with together. It is important to state from the outset that it is now settled law in this jurisdiction that this court will only interfere with the findings of fact in very limited circumstances and where it is satisfied that the learned judge plainly erred in reaching his conclusions of fact on the evidence before him. In the case of **Rayon Sinclair v Edwin Bromfield** [2016] JMCA Civ 7 at para. [7], Brooks JA (as he then was) confirmed the position of this court in reviewing the decision and stated the following:

“[7] It has been stated by this court, in numerous cases, that it will not lightly disturb findings of fact made at first instance by the tribunal charged with that responsibility. Their Lordships in the Privy Council, in **Industrial Chemical Co (Ja) Ltd v Ellis** (1986) 23 JLR 35, an appeal from a decision of this court, approved of that approach. The Board ruled that it is only in cases where the findings of the tribunal are not supported by the evidence, or it is clear that the tribunal did not make use of the benefit of having seen and heard the witnesses, that the appellate court would disturb those findings. Their Lordships re-emphasised that principle in their decision in **Beacon Insurance Company Limited v Maharaj Bookstore Limited** [2014] UKPC 21. The Board stated, in part, at paragraph 12:

‘...It has often been said that the appeal court must be satisfied that the judge at first instance has gone ‘plainly wrong’. See, for example, Lord Macmillan in *Thomas v Thomas* [[1947] AC 484] at p 491 and Lord Hope of Craighead in *Thomson v Kvaerner Govan Ltd* 2004 SC (HL) 1, paras 16-19. This phrase does not address the

degree of certainty of the appellate judges that they would have reached a different conclusion on the facts: *Piggott Brothers & Co Ltd v Jackson* [1992] ICR 85, Lord Donaldson at p 92. **Rather it directs the appellate court to consider whether it was permissible for the judge at first instance to make the findings of fact which he did in the face of the evidence as a whole.** That is a judgment that the appellate court has to make in the knowledge that it has only the printed record of the evidence. **The court is required to identify a mistake in the judge's evaluation of the evidence that is sufficiently material to undermine his conclusions.** Occasions meriting appellate intervention would include when a trial judge failed to analyse properly the entirety of the evidence: *Choo KokBeng v Choo Kok Hoe* [1984] 2 MLJ 165, PC, Lord Roskill at pp 168-169." (Emphasis as supplied by Brooks JA)

[23] It is also settled that this court should be even more cautious to interfere where the tribunal whose decision is being reviewed reached its conclusion after seeing and hearing witnesses who gave conflicting testimony. However, even in the absence of any advantage gained by the tribunal because it may have seen or heard witnesses, the appellate court will nevertheless be reluctant to interfere except in the circumstances where the learned judge plainly erred.

[24] Ground a, in essence, was a challenge to the finding of fact by the learned judge contained in para. [40] of the judgment as follows:

"[40] I find that the inescapable inference is that the [appellant] received the dismissal letter. She was seeking to have the decision which was made to dismiss her reversed and have some other or lesser punishment imposed as is stated in Section 38 of the [Police Service Regulations]."

[25] The evidence of Andrew Lewis, contained in his affidavit filed on 2 July 2020, is that the appellant was informed, by a letter dated 31 March 2003, that she had been

dismissed from the Jamaica Constabulary Force, pursuant to regulation 38 of the Police Service Regulations. The letter was exhibited to his affidavit, but the learned judge found that there was no direct evidence of proof of service of the letter on the appellant placed before her (see para. [36] of the judgment). The appellant denied having received the letter and asserted that she was told by a colleague on the telephone that she had been dismissed from the Jamaica Constabulary Force. It, therefore, fell for the learned judge's determination whether the appellant received the letter.

[26] The learned judge, at para. [37] of the judgment, noted that the evidence was that the appellant, having received this information in the manner she claimed, acted upon it by engaging the Public Defender and the Police Federation to intervene on her behalf. The learned judge considered in particular her conduct in that regard as disclosed by the evidence, as follows:

- (a) the appellant's letter to the Commissioner of Police dated 4 August 2017;
- (b) the appellant's letter to the Commissioner of Police dated 11 March 2019;
- (c) the letter signed by the appellant to the Commissioner of Police dated 14 July 2003, which is headed "Re- Dismissal of #6353 Woman Constable Cunningham from the Jamaica Constabulary Force";
- (d) the appellant seeking the intervention of the Public Defender to intervene on her behalf and his letter to the Commissioner of Police, dated 17 July 2003, sought to have the Commissioner of Police to review the appellant's case and invited him to reconsider her dismissal relying on regulation 38. The learned judge found that especially since there was no challenge to the contents of

the letter, it reflected the instructions given to the Public Defender by the appellant; and

(e) the fact that the Police Federation met with the Commissioner of Police on behalf of the appellant and also, acting on behalf of the appellant, subsequently petitioned the Governor-General by way of a letter dated 30 October 2003. By letter 13 April 2004 the Governor-General advised the Police Federation that there was no basis on which a pardon could be considered, and the Governor-General accepted the recommendation. The letter stated that:

“...The Privy Council at its meeting held on April 6, 2004 considered your request for a pardon to be granted to Ms. Cunningham in accordance with Section 90(1)(a) of the Constitution of Jamaica. This as a result of her being dismissed from the Jamaica Constabulary Force in accordance with the provisions of Regulation 38 of the Police Service Regulations, 1961.”

[27] The learned judge noted the appellant’s assertion that up to 2019, when she filed her claim, she was never served with the dismissal/termination letter, but that notably in her letter to the Commissioner of Police, dated 14 July 2003, there was no mention by her that she had only been made aware of the alleged dismissal by a colleague. The learned judge also reproduced the first, and portions of the final paragraph of the letter as follows:

“I hereby with respect seek audience with the Commissioner of Police on the matter of being re-enstated [sic] in the organization’ and

‘I am aware that the regulation makes provision for the dismissal of persons convicted of a criminal offence but I have a discover [sic] a light of hope when I read section 38 of the [Police] Service Regulation’”
(Emphasis as supplied by the learned judge)

[28] Having analysed the evidence of the interventions made on the appellant's behalf by the Public Defender and the Police Federation, respectively, the learned judge arrived at the following finding, in para. [45] of her judgment:

"[45] I find that the Federations petition to the Governor General for a pardon to be granted to the [appellant] was completely consistent with the approach taken by the [appellant] from her July 14, 2003 letter. It was also consistent with the approach taken by the Public Defender, Mr. Howard Hamilton. The graven [sic] of each intervention was to have the decision for dismissal reversed, not that she was not served with a letter of dismissal and was uncertain of her status with the JCF."

[29] We were unable to find any errors in the learned judge's evaluation of the evidence that was sufficiently material to undermine her conclusions. The appellant's assertion in her affidavit filed 25 September 2019 that up to 2019, she did not receive any formal notice of her dismissal and that the only notice she got was by a telephone call from a colleague informing her that she was no longer a serving member of the Jamaica Constabulary Force, was not credible. This was especially so when viewed against the steps taken by the appellant, which were premised on the fact that she had been dismissed. Furthermore, in the period following her dismissal, the appellant made no issue of her claim that she did not receive notice of her dismissal.

[30] In these circumstances, consistent with the authority of **Rayon Sinclair v Edwin Bromfield** to which we have previously referred, we concluded that it was permissible for the learned judge to make the findings of fact which she did based on the evidence. Accordingly, ground a of the appeal failed.

[31] Ground b was a nuanced re-formulation of ground a, which maintained the complaint that the appellant did not receive notice of her dismissal. However, it introduced an additional requirement for the notice and was based on the premise that there was a legal requirement for the Commissioner of Police to personally inform the appellant that she was dismissed from the Jamaica Constabulary Force, in order for the

dismissal to be valid. No authority to this effect was produced to this court nor were we aware of any. This ground, therefore, failed.

[32] Ground f also failed. It was reasonable to conclude, as the learned judge quite correctly did, that the actions of the Police Federation in advancing the cause of the appellant were done with her concurrence, especially, in the absence of any evidence that she at any time requested the Police Federation not to act on her behalf, or that she disassociated herself from the actions of the Federation. Notably, in her affidavit filed 11 August 2020, the appellant averred that having been made aware of her dismissal and the publication in the Force Order in a telephone conversation with a colleague, she enlisted the intervention of the Police Federation, which sought to have an audience with the Commissioner of Police so that they could all discuss what she was told by her colleague about her dismissal. She complained that at the meeting that was convened, the Police Federation met with the Commissioner of Police, but she was asked to stay seated in the waiting room.

[33] The learned judge also considered the fact that the appellant, through the intervention of the Police Federation and, by way of a letter dated 30 October 2003, engaged the Governor-General by seeking a request for a pardon in accordance with section 90(1)(a). The conclusion that the request for the pardon was on behalf of and with the concurrence of the appellant was reasonable in the circumstances.

[34] The learned judge was, therefore, entitled to consider the actions taken by the Police Federation and conclude that they were on the appellant's behalf and with her full knowledge and consent. The evidence of the actions of the Police Federation was used by the learned judge for the limited purpose of supporting her conclusion that there was an acknowledgement by the appellant that she had been dismissed, and that the appellant did not, at that time, raise as a material complaint that she had not been formally notified by the COP of the fact that her re-enlistment was refused.

[35] Ground d is based on the appellant's position that there was a duty on the Commissioner of Police to inform her that she was entitled, if she wished, to petition the

local Privy Council and to state why she should not be dismissed from the Jamaica Constabulary Force. There was no such requirement, and this ground was not pursued before us.

Ground c- The Learned Trial Judge erred in law in failing to appreciate that Section 38 of the Police Services Regulations must be read in conjunction with Section 131(4) of the Constitution, which allows for the Appellant to petition the local Privy Council as to the reason why she should not be dismissed from the Jamaica Constabulary Force.

Ground g- The Learned Trial Judge erred in law in failing to appreciate that, in the absence of compliance with Section 131(4) of the Constitution, any purported dismissal of the Appellant from the Jamaica Constabulary Force is illegal, null and void and of no effect.

[36] Grounds c and g can conveniently be addressed together to the extent that they were founded on the link between regulation 38 and section 131(4) of the Constitution.

[37] Regulation 38 specifically addresses the dismissal or punishment of a member of the JCF in circumstances where he or she has been convicted of a criminal offence. It provides as follows:

“38. If a member is convicted in any court of a criminal charge the Commission may consider the relevant proceedings of that court and if the Commission is of the opinion that the member ought to be dismissed or subjected to some lesser punishment in respect of the offence of which he has been convicted the Commission may thereupon recommend the dismissal or other punishment of the member without the institution of any disciplinary proceedings under these Regulations.”

It was not contested that this was the applicable regulation that was relied on by the Commissioner of Police in ordering the appellant’s dismissal.

[38] Section 131(4) of the Constitution provides that an officer who has been dismissed by a person or authority other than the Governor-General acting on the advice of the Police Service Commission may apply for the case to be referred to the Privy Council and is in the following terms:

“(4) Where by virtue of an instrument made under this section, the power to remove or to exercise disciplinary control over any officer has been exercised by a person or authority other than the Governor-General acting on the advice of the Police Service Commission, the officer in respect of whom it was so exercised may apply for the case to be referred to the Privy Council, and thereupon the action of the aforesaid person or authority shall cease to have effect and the case shall be referred to the Privy Council accordingly; and the Governor-General shall then take such action in respect of that officer as the Privy Council may advise:

Provided that-

(a) where the action of the aforesaid person or authority includes the removal of that officer or his suspension from the exercise of his office, that person or authority may nevertheless suspend him from the exercise of his office pending the determination of the reference to the Privy Council; and

(b) before advising the Governor-General under this subsection, the Privy Council shall consult with the Police Service Commission.”

[39] Ground g was advanced on an interpretation of section 131(4), which was, with respect, misconceived. It mirrored the declaration sought by the amendment to the FDCF and was founded on the belief that the appellant could not have been properly dismissed pursuant to regulation 38 without compliance with conditions imposed by section 131(4) of the Constitution.

[40] The learned judge fully appreciated that section 131(4) could be engaged where a party had been dismissed by the Commissioner of Police, pursuant to regulation 38, and that section 131(4) did not place an additional requirement on the Commissioner of Police in ordering a dismissal pursuant to regulation 38. The learned judge’s accurate interpretation of the effect of section 131(4) was amply demonstrated in the judgment at para. [48] which guided her conclusion in para. [49]. Both paragraphs are reproduced as follows:

“[48] I find that the declaration being sought is misguided. Section 131(4) is invoked where the power to remove or exercise disciplinary control has been exercised by any person or authority other than the Governor General. A positive action would have to take place and upon that happening, the affected party may apply for the case to be referred to the Privy Council. If they choose to, then the action of the person or Authority will cease to have effect and the case shall be referred to the Privy Council.

[49] I therefore conclude that the procedure of dismissal in accordance with Section 38 of the Jamaica Police Service Regulations is not automatically dependent on compliance with Section 131(4) and the Declaration being sought must be refused.”

[41] We found that grounds c and g had no merit.

Ground e- The Learned Trial Judge erred in law in failing to appreciate that the action of the Police Federation to petition the Governor General after the purported dismissal of the Appellant from the Jamaica Constabulary Force for a pardon, does not comport with Section 131 (4) of the Constitution.

[42] The learned judge at para. [51] indicated that the action of the Police Federation on behalf of the appellant in seeking a pardon for the appellant was in accordance with section 90(1) of the Constitution. This was independent of any relief the appellant may have pursuant to section 131(4) of the Constitution, and accordingly, we concluded that this ground was ill-founded.

Conclusion and disposal

[43] We did not find any merit in the appellant’s grounds of appeal. The learned judge performed an admirable interrogation of the evidence and correctly analysed and interpreted the applicable law. We concluded that the learned judge's judgment and conclusions contained therein were unassailable.

[44] For the reasons stated herein, we made the orders contained in para. [7] hereof.