[2022] JMCA Civ 3

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE P WILLIAMS JA
THE HON MR JUSTICE D FRASER JA
THE HON MISS JUSTICE SIMMONS JA

SUPREME COURT CIVIL APPEAL NO 55/2018

BETWEEN	**JACQUELINE MENDEZ**	**1st APPELLANT**
AND	**PUBLIC SERVICE COMMISSION**	**2nd APPELLANT**
AND	**DEBORAH PATRICK-GARDNER**	**RESPONDENT**

Ms Althea Jarrett and Ms Carla Thomas instructed by the Director of State Proceedings for the appellants

Hugh Wildman and Ms Faith Gordon instructed by Hugh Wildman and Co for the respondent

15 December 2020 and 21 January 2022

P WILLIAMS JA

[1] I have read in draft the judgment of Simmons JA. I agree with her reasoning and conclusion and have nothing to add.

D FRASER JA

[2] I too have read the draft judgment of Simmons JA and agree with her reasoning and conclusion. There is nothing that I wish to add.

SIMMONS JA

[3] The delay in the delivery of this judgment is sincerely regretted, and the court apologizes for it.

[4] This is an appeal from a decision of the Full Court made on 19 April 2018, granting an order of certiorari quashing the decision of the 2nd appellant, the Public Service Commission ('the Commission'), to retire the respondent, Mrs Deborah Patrick-Gardner ('Mrs Gardner'), from the public service (see **Deborah Patrick-Gardner v Jacqueline Mendez and the Public Service Commission** [2018] JMFC Full 2).

[5] The appellants filed 11 grounds of appeal. However, at the commencement of the hearing on 15 December 2020, Ms Althea Jarrett, on behalf of the appellants, indicated that they would only be pursuing grounds (a), (b) and (j), thus effectively abandoning the remaining grounds (c) – (i). After hearing the submissions from both counsel on the three grounds being pursued, we invited Ms Jarrett to indicate in writing the orders that were now being sought. We reserved our decision and promised to deliver the court's reasons in writing at a later date.

[6] By way of letter dated 18 December 2020, Ms Carla Thomas, on behalf of the appellants, indicated that the appellants were seeking orders in the following terms:

> "1. The appeal is allowed in part.
>
> 2. It is hereby ordered that:
>
> (i) The manner in which the [respondent] was purportedly retired was not contrary to regulation 26 of the Public Service Regulations. Regulation 26 is to be interpreted as applying to the retirement of a public officer in circumstances where there is dissatisfaction with a public officer or where the public officer is unsuitable to remain in the public service.
>
> (ii) Section 15A(1) of the Judicature (Supreme Court) Amendment Act is in contravention of section 125 of the Constitution. Accordingly, that section is to be amended to remove the words 'after consultation with the Chief Justice' and 'subject to the approval of the Chief Justice'.
>
> (iii) No order as to costs."

[7] The respondent, on her own behalf, by letter dated 8 January 2021, sought to address the above by way of submissions in respect of grounds (a), (b) and (j). She filed authorities in support of those submissions. This was followed by the "Further Submissions of the Respondent", filed on 22 January 2021, in the same terms as the letter of 8 January 2021. The appellants responded to those submissions on 11 February 2021 and this was followed by the "Respondent's Submissions in Reply" filed on 1 March 2021.

[8] These further submissions deal with the issue of whether, in light of the concessions made by counsel for the appellants, the remaining grounds of appeal are solely of academic interest. Having received the above submissions, this court is now in a position to deliver its judgment.

Background

[9] On 1 October 2011, Mrs Gardner was appointed in the public service as the Principal Executive Officer of the Court Management Services. About two years into her tenure, she applied for and obtained study leave for three years to pursue a Bachelor of Laws Degree, with the stipulation that she would receive: (i) two years paid study leave and (ii) one-year unpaid study leave. Mrs Gardner completed her course of study in two years (in about September 2015) and subsequently sought additional leave to pursue the Certificate of Legal Education at the Norman Manley Law School. By way of letter dated 24 September 2015, Mrs Gardner was informed that she had been granted study leave for 24 months without pay.

[10] On 25 September 2015, she indicated by letter addressed to the Commission that she had resumed duties as the Principal Executive Officer. She also indicated that she had been unable to gain access to the office of the Principal Executive Officer as it was still occupied by Mrs Carol Hughes, who had been acting in that position.

[11] By letter dated 28 September 2015, addressed to the Commission, Mrs Gardner declined the offer of unpaid study leave. She again indicated that she had been unable

to access her assigned office and also only one-third of her salary for the month of September had been lodged to her bank account.

[12] By letter dated 28 September 2015, Mrs Gardner was advised by Dr Lois Parkes, the Chief Personnel Officer at the time, that since she had been granted study leave for three years, her resumption was not anticipated until September 2016. As such, no arrangements were made for her return on 25 September 2015. Dr Parkes also indicated that the justice reform programme was at a critical stage, and "in the interest of the continued smooth operations of the Court Management Services, a change of leadership at [that] juncture would be unsettling".

[13] In another letter dated 28 September 2015, Dr Parkes informed Mrs Gardner that upon the recommendation of the Chief Justice, approval had been given for her to be re-deployed to the Ministry of Justice ('the Ministry') with effect from 29 September 2015 until further orders. She was also informed that she was expected to carry out duties in relation to the coordination of the justice reform programme as well as any other duties assigned to her by the Permanent Secretary.

[14] Mrs Gardner reported to the Ministry on 29 September 2015 and was advised that she was to report to Mrs Donna Parchment Brown, the Director of the Justice Reform Implementation Unit.

[15] On 1 October 2015, Mrs Gardner, who had concerns regarding her deployment to the Ministry, met with Dr Parkes to discuss those concerns. By letter dated 16 October 2015, which was addressed to Dr Parkes, Mrs Gardner noted that in their meeting, Dr Parkes had given an undertaking to raise her concerns with the Commission at its meeting scheduled to be held on 21 October 2015. Specifically, Mrs Gardner was concerned with what she described as "inconsistencies observed in [her] actual deployment and the provisions in the Public Service Regulations (the Regulations) as well as Staff Orders 1.9.3 [of the Staff Orders for the Public Service ('the Staff Orders')]".

[16] Mrs Gardner requested that, in light of the decision to deploy her to the Ministry, she be assigned to an equivalent position in accordance with the Regulations and the Staff Orders.

[17] Having received no response to her letter dated 16 October 2015, Mrs Gardner wrote to Dr Parkes on 8 January 2016, reminding her of the concerns raised in that letter and her undertaking to raise them with the Commission.

[18] On 18 January 2016, Mrs Gardner met with the 1st appellant, Mrs Jacqueline Mendez ('Mrs Mendez'), who was by then the Chief Personnel Officer and expressed her concerns.

[19] On 25 January 2016, Mrs Gardner wrote to Mrs Mendez outlining the history of the matter and reminded her that she had indicated that it would be placed before the Commission at its meeting that month. By way of letter dated 15 February 2016, Mrs Mendez advised the respondent that the Commission had been made aware of her concerns and that its decision would be communicated to her in due course.

[20] By letter dated 20 May 2016, to which a memorandum dated 19 May 2016 was attached, Mrs Gardner was informed by Mrs Mendez that consequent on the 2016 amendment to the Judicature (Supreme Court) Act (the Act), approval had been given for her to be retired from the public service effective 1 June 2016, on the ground of reorganization in accordance with section 6(1)(iv) of the Pensions Act.

[21] Mrs Gardner, who was dissatisfied with this state of affairs, sought and obtained leave for judicial review of that decision. On 20 July 2016, a fixed date claim form was filed on her behalf in which 17 declarations and six orders were sought. The declarations were concerned with the legality of the decision to retire Mrs Gardner from the public service, the procedure that was utilized to do so and the constitutionality of section 15A(1) of the Act, which mandated the Commission to consult with the Honourable Chief Justice in respect of the appointment of the Director of Court Administration. Mrs Gardner also sought the following orders:

"18. An Order of certiorari quashing the decision of [Mrs Mendez] as contained in letters dated May 19 and 20, 2016 respectively, purporting to retire the [respondent] from the post of Principal Executive Officer of the Court Management Services;

19. An Order of certiorari quashing the decision of the [appellants] in purporting to re-deploy the [respondent] from the post of Principal Executive Officer of the Court Management Services to the Ministry of Justice on the recommendation of the Chief Justice;

20. An order of Prohibition prohibiting the [appellants] by themselves or servants or agents from taking any steps to prevent the [respondent] from performing her functions as the duly appointed Principal Executive Officer of the Court Management Services;

21. An Injunction restraining the [appellants] by themselves, their servants or agents, from taking any steps to prevent the [respondent] from performing her functions as the duly appointed Principal Executive Officer of the Court Management Services;

22. Damages to the [respondent] to be assessed for the illegal action of the [appellants] in preventing the [respondent] from continuing in her appointment as the duly appointed Principal Executive Officer of the Court Management Services;

23. Costs of the Claim to the [respondent]."

Proceedings in the Full Court

[22] Counsel for Mrs Gardner, as can be gleaned from paragraph [30] of the judgment of the Full Court, submitted that the matter raised three issues. They were:

"i. That her constitutional rights were breached in that she was not given a chance to be heard before the purported retirement, in accordance with the rules of natural justice and the Constitution;

ii. That she had a legitimate expectation that she would not be removed from the public service without being given the opportunity to be heard;

iii. That the provisions in the amendment to the Judicature (Supreme Court) Act establishing the office of the Director of Court Administration gives the Chief Justice powers to be consulted in respect of appointment and renewal of appointment of the Principal Executive Officer, is unconstitutional in that it breaches the doctrine of separation of powers."

[23] It was Mrs Gardner's position that she ought to have been retired in accordance with the procedure set out in regulation 26 of the Regulations, which provides for the retirement of a public officer in the public interest. That regulation affords an officer whose retirement in the public interest is being considered, the opportunity to be heard.

[24] Counsel further submitted on Mrs Gardner's behalf that regulation 26 was consistent with her rights as provided for in section 16(2) of the Charter of Fundamental Rights and Freedoms (the Constitution), which states that "once a person's rights stand to be prejudiced, irrespective of the circumstances, the aggrieved person must be afforded an opportunity to make representations before a decision is taken adverse to that person's interest".

[25] Counsel for the appellants submitted, in response, that regulation 26 was inapplicable, as the Commission's decision to retire Mrs Gardner was not based on that regulation but rather, section 6(iv) of the Pensions Act, which states that:

> "6 (1) Subject to subsection (3), no pension, gratuity, or other allowance, shall be granted under this Act to any officer except on his retirement from the public service in one of the following cases-
>
> …
>
> (iv) on compulsory retirement for the purpose of facilitating improvement in the organization of the department to which he belongs, by which greater efficiency or economy may be effected."

[26] Further, it was argued that regulation 26 was only applicable in circumstances where a public officer was being retired for cause rather than where retirement was

consequent on a restructuring exercise. In the circumstances, a hearing was unnecessary as no allegations had been made against Mrs Gardner.

[27] The Full Court, at paragraph [96], understood regulation 26 to be applicable where:

> "1) Retirement has been proposed to the Commission or the Commission considers it desirable;
>
> 2) the proposed retirement is in respect of a 'public officer';
>
> 3) the proposed retirement is in the public interest;
>
> 4) the grounds of the proposed retirement cannot 'suitably' be dealt with under any of the other regulations."

[28] Whilst the said court had no difficulty in finding that conditions 1, 2 and 4 had been satisfied, it expressed some reservation as to whether the criterion that "the retirement [be] in the public interest" had been met. In analyzing this concept, the Full Court placed reliance on the definition of "public interest" as set out in Black's Law Dictionary (9th Edition, 2009):

> "1. The general welfare of the public that warrants recognition and protection.
>
> 2. Something in which the public as a whole has a stake; esp., an interest that justifies governmental regulation."

[29] The Full Court also relied on **London Artists Ltd v Littler; [And Associated Actions]** (**London Artists**) [1969] 2 ALL ER 193, where Lord Denning at page 198 defined 'public interest' as "a matter which is such as to affect people at large so that they may be legitimately interested in it, or concerned at what is going on; or what may happen to them or others".

[30] In its consideration of whether Mrs Gardner's retirement was in the public interest, the Full Court examined the Memorandum of Objects and Reasons accompanying the Bill for an act shortly entitled "the Judicature (Supreme Court) (Amendment) Act 2016". The

Full Court then referred to the appellants' submission that the amendment was geared towards ensuring greater efficiency and effectiveness in the administration of the court system and opined that "[i]t **may** well be then that the purpose of [Mrs Gardner's] retirement constitutes a cause in the 'public interest" (emphasis supplied).

[31] The Full Court observed that, in our jurisprudence, the concept of retirement in the public interest was generally applicable in 'matters for cause'. It was also observed that there was no indication in regulation 26 of the Regulations or in any other provision that its interpretation ought to be confined to such matters. As such, regulation 26 was found to be applicable. The Full Court stated that the common thread between regulations 24 – 26, which deal with the compulsory and pre-mature retirement of public officers, was that such officers were required to be treated fairly. In other words, Mrs Gardner was entitled to be heard, and the Commission had failed to afford her that opportunity. Having outlined the steps that were required for compliance with regulation 26, the point was made that, although it had been averred there was no comparable post which could have been offered to Mrs Gardner, no evidence had been presented in support of that assertion.

[32] The Full Court also found that, in the event that regulation 26 was inapplicable, there was "no reason why the [respondent], who had, on the suggestion of the Honourable Chief Justice, gained additional qualifications to make her better suited for the job should not have been given a hearing". This, it was said, raised issues of "justification and procedural fairness as the retirement should be substantially justified and procedurally fair". Reliance was placed on **Derrick Wilson v The Board of Management of Maldon High School and the Ministry of Education** [2013] JMCA Civ 21 and **McLaughlin v Governor of the Cayman Islands** [2002] CILR 576 and **McLaughlin v Governor of the Cayman Islands** [2004–05 CILR 515].

[33] With respect to the issue of whether section 15A(1) of the Act was in breach of section 125 of the Constitution and the principle of the separation of powers, the Full Court found that section 15A(1), by mandating the Commission to consult with the Chief

Justice in respect of the appointment of the Director of Court Administration, usurped the discretion of the Commission as conferred by section 125 of the Constitution. Section 15A(1) of the Act states as follows:

> "15.A (1) Subject to subsection (2), the Director of Court Administration shall be appointed by the Governor-General, on the recommendation of the Public Service Commission after consultation with the Chief Justice, for a term of three years which shall be renewable, subject to the approval of the Chief Justice."

[34] In dealing with this issue, the Full Court, whilst acknowledging the principle of the separation of powers between the executive, the legislative and the judiciary as underpinning the Constitution, stated that such powers may, on occasion, overlap due to the judiciary being more involved in its own administrative matters (see **Hinds and Others v R** [1977] AC 195, **Director of Public Prosecutions v Mollison (No 2)** [2003] UKPC 6 and Judicial Independence from the Executive: A First-Principles Review of the Australian Cases by Rebecca Ananian-Welsh and George Williams (Monash University Law Review, Vol 40, No 3 Aug 2015, pages 549 and 611-613)).

[35] The Full Court noted that, pursuant to section 125 of the Constitution, the Governor-General has the power to appoint, remove and exercise disciplinary control over public officers on the advice of the Commission. Reference was also made to regulation 10 of the Regulations, which states that the Commission may consult with any person. It states:

> "10. The Commission in considering any matter or question may consult with any such public officer or other person as the Commission may consider proper and desirable and may require any public officer to attend and give evidence before it and to produce any official documents relating to such matter or question."

[36] The Full Court stated that, based on the above regulation, the Commission is an independent body under the Constitution and ought not to be subject to any external pressures or considerations. Consequently, the Full Court found that section 15A(1) of

the Act, which mandates the Commission to consult with the Chief Justice, usurped the discretion of the Commission. This stipulation, it said, created an absurd situation as, in the event that the Commission chooses not to consult with the Chief Justice, it would have breached the Act but not the Constitution. Moreover, by this section, a great deal of power would reside in the Chief Justice, and it was doubtful that judicial review of the exercise of that power would be available. The Full Court found that an appropriate remedy in the circumstances was the severance of section 15A(1) from the Act. The Full Court was, however, unwilling to find that the section was in breach of the principle of the separation of powers given the acknowledged possibility of the overlap of administrative functions.

[37] The Full Court in its disposition of the matter stated at paragraphs [229] - [231]:

> "[229] This court has found that the manner in which the [respondent] was purportedly retired was unlawful in that it was contrary to **section 125(3)** of the **Constitution**, Regulation 26 of the **Public Service Regulations**, and contrary to the rules of natural justice. Further, the purported reasons given in the letter were irrational.
>
> [230] Accordingly, the Court grants the order of certiorari to quash the decision purporting to retire the [respondent], but declines to make an order for prohibition in the terms sought. Instead, the Court would order that the [respondent] is to remain as a public servant as long as she is willing and able to provide service, or unless she is removed in a lawful manner.
>
> [231] Further, the Court having found that the [respondent] had locus standi to challenge the amendment, also finds that section 15A(1) of the impugned legislation is in contravention of section 125 of the **Constitution** and thus is rendered null and void. The Court, however does not find that the section is in breach of the doctrine of separation of powers, nor that section 15A(3) is in breach of section 125 or of the separation of powers. That section is to be severed and

appointment is to be done in accordance with **section 125** of the **Constitution**." (Emphasis as in original)

[38] There was no order as to costs.

The notice and grounds of appeal

[39] By notice of appeal, filed 31 May 2018, Mrs Mendez and the Commission, seek to challenge certain aspects of those orders. As previously indicated of the 11 grounds of appeal, which were filed at the hearing of the appeal on 15 December 2020, only three grounds of appeal were advanced. They were grounds (a), (b) and (j) which state as follows:

> "(a) The Full Court erred in law in finding that Regulation 26 of the Public Service Regulations applied to the circumstances of the [respondent's] case and that the [respondent] was entitled to the benefit of the procedure set out therein in circumstances where the [respondent] was being retired on the ground of reorganization as a result of her post being redundant consequent on the passing of the amendment to the Judicature (Supreme Court) Act.
>
> (b) The Full Court erred in its interpretation of the term 'public interest' as used in regulation 26 of the Public Service Regulations.
>
> And
>
> (j) The Full Court erred in finding that the other provisions of the Act can survive independently of section 15A(1) and ordering that it be severed as:
>
> (i) It failed to consider that in the absence of this subsection, there is no provision that sets out the period of appointment of the Director of Court Administration;
>
> (ii) It failed to consider that having regard to the nature of the responsibilities of the Director of Court Administration, it would be unworkable if there were no reference to the Chief Justice in the appointment and renewal of the contract of the Director of Court Administration."

The appeal

[40] The issue of whether the remaining grounds of appeal are solely of academic interest is a preliminary one and will be addressed at this juncture.

Is the appeal solely of academic interest?

Respondent's further submissions

[41] Mrs Gardner, in her written submissions, argued that the concessions made by counsel for the appellants have resulted in the resolution of the substantive issues in the appeal. This was in accordance with the submissions made on her behalf by Mr Wildman during the hearing of the appeal. She contended that, as a result, the issue of the applicability of regulation 26 or whether the Act should be amended, was now otiose. The resolution of grounds [a] and [b], she said, does not affect the outcome of her case in any way and is therefore "of no moment". Those issues, she said, were now solely academic in nature, and the court has no "jurisdiction to decide academic questions or give advisory opinions".

[42] Specific reference was made to page 380 of **Ainsbury v Millington** [1987] 1 WLR 379 ('**Ainsbury**'), where Lord Bridge cited the following passage from **Sun Life Assurance Company of Canada v Jervis** [1944] AC 111, 113-114:

> "I do not think that it would be a proper exercise of the authority which this House possesses to hear appeals if it occupies time in this case in deciding an academic question, the answer to which cannot affect the respondent in any way. If the House undertook to do so, it would not be deciding an existing lis between the parties who are before it, but would merely be expressing its view on a legal conundrum which the appellants hope to get decided in their favour without in any way affecting the position between the parties…I think it is an essential quality of an appeal fit to be disposed of by this House that there should exist between the parties a matter in actual controversy which the House undertakes to decide as a living issue."

[43] Mrs Gardner also directed the court's attention to paragraph [71] of **Andrew Coke v The Commissioner of Police and others** [2015] JMFC Full 2 ('**Coke**'):

> "[71] …but the jurisdiction of the court is not to declare the law generally or to give advisory opinions; it is confined to declaring contested legal rights, subsisting or future, of the parties represented in the litigation before it and not those of anyone else."

[44] It was submitted that based on **Regina v Secretary of State for the Home Department, ex parte Salem** [1999] 1 AC 450 ('**Salem**'), **R (on the application of Dolan and others) v the Secretary of State for Health and Social Care and another** [2020] EWCA Civ 1605 ('**Dolan**') and **Hutcheson v Popdog Ltd (News Group Newspapers Ltd, third party); Practice Note** [2012] 1 WLR 782 ('**Popdog Ltd**'), the court's jurisdiction to hear such matters could only be exercised where the matter is of public importance. That condition, she said, has not been met in this case.

[45] Mrs Gardner submitted that the term "public importance" has been given a restricted interpretation by the courts and has been "narrowly construed to involve *inter alia*, discrete points of statutory construction not involving detailed consideration of facts" where there are likely to be a large number of similar cases to be resolved in the future. She argued that meeting that standard in the instant case would be "problematic", as regulation 26 is used in cases of unfitness and not for retirement based on reorganization. As such, the question is unlikely to arise.

[46] Where ground (j) is concerned, Mrs Gardner submitted that the order requested by the appellants, for the amendment of section 15A(1) of the Act, does not raise an issue of statutory construction as the court is not being asked to interpret but rather to amend the said legislation. Further, it does not involve a matter of general public importance.

[47] In the circumstances, it was submitted that the appellants have not satisfied the requirements that would allow the court to grant the revised orders sought.

Appellants' submissions

[48] The appellants submitted that Mrs Gardner's contentions were misconceived as the question of whether the manner in which she was retired is contrary to regulation 26 is not an academic one. Counsel stated that the Full Court found that the procedure adopted by the Commission, was, in addition to being contrary to the rules of natural justice, in breach of regulation 26, in circumstances where that regulation had not been engaged. This was, therefore, a live issue arising from the judgment.

[49] With respect to ground (j), it was submitted that the issues surrounding the Full Court's order for the severance of section 15A(1) of the Act were not otiose. The appellants argued that the concessions made on the appeal were not concerned with whether that severance would result in the removal of the statutory provision dealing with the period of appointment of the Director of Court Administration. This ground, it was argued, is not purely of academic interest.

Respondent's submissions in reply

[50] Mrs Gardner maintained that the issue of the applicability of regulation 26 was of academic interest as it did not affect the outcome of her case in any way. She submitted that the term "academic" was misconstrued by counsel for the appellants. Having referred to Black's Law Dictionary, **Ainsbury** and **Coke**, she argued that the test for determining whether an issue is an academic one was whether there was a live issue between the parties and not whether there was a live issue arising from the judgment. Mrs Gardner further submitted that her retirement was the central issue in the claim. She stated that all the grounds advanced on her behalf were in furtherance of the position that her retirement was an illegality. That issue, she said, was settled by virtue of the appellants' concessions and, as such, the matter is now at an end. In closing, Mrs Gardner stated that the questions in relation to regulation 26 and severance are "academic; 'theoretical', not practical or immediately of any relevance to the respondent".

Discussion and analysis

[51] The dispute between the appellants and Mrs Gardner arose as a result of the Commission's decision for her to be retired from the public service, consequent on the abolition of the post of Principal Executive Officer, without giving her an opportunity to be heard.

[52] The appellants have conceded that the Commission breached the rules of natural justice when Mrs Gardner was retired from the public service without being afforded the opportunity to be heard. That concession disposed of any question that the Full Court had erred when it granted an order of certiorari quashing the decision purporting to retire Mrs Gardner from the public service.

[53] Grounds [a], [b] and [j], as submitted by Mrs Gardner, do not affect the outcome of her case at all. She has received her remedy. There is, therefore, no live issue between the parties. Those matters, without more, could in the circumstances be described as being solely of academic interest. The issue of what amounts to being of academic interest was addressed in **Ainsbury**, **Coke**, **Salem**, **Dolan** and **Popdog Ltd,** which were relied on by the respondent.

[54] In **Salem**, Lord Slynn of Hadley, at pages 456 – 457, stated the principle in the following terms:

> "My Lords, I accept, as both counsel agree, that in a cause where there is an issue involving a public authority as to a question of public law, your Lordships have a discretion to hear the appeal, even if by the time the appeal reaches the House there is no longer a lis to be decided which will directly affect the rights and obligations of the parties inter se. The decisions in the Sun Life case and Ainsbury v. Millington (and the reference to the latter in Rule 42 of the Practice Directions Applicable to Civil Appeals (January 1996) of your Lordships' House) must be read accordingly as limited to disputes concerning private law rights between the parties to the case.
>
> The discretion to hear disputes, even in the area of public law, must, however, be exercised with caution and appeals which

> are academic between the parties should not be heard unless there is a good reason in the public interest for doing so, as for example (**but only by way of example**) when a discrete point of statutory construction arises which does not involve detailed consideration of facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future." (Emphasis supplied)

[55] The above passage was referred to by the court in **Dolan**, where it was stated at paragraph 40:

> "40. The principle which governs the exercise of the Court's jurisdiction to hear judicial review cases which have become **academic** was set out by Lord Slynn of Hadley in R v Secretary of State for the Home Department, ex parte Salem [1999] 1 AC 450, at 456 to 457. There is a discretion to hear disputes which have become **academic** but the discretion, even in the area of public law, must be exercised with caution; appeals which are academic between the parties should not be heard 'unless there is a good reason in the public interest for doing so'." (Emphasis as in the original)

The court also noted that the scenario referred to by Lord Slynn was an example of the circumstances in which the court may exercise its discretion in matters of public law.

[56] In **PopDog Ltd**, Lord Neuberger addressed the issue thus:

> "12 The mere fact that a projected appeal may raise a point, or more than one point, of significance does not mean that it should be allowed to proceed where there are no longer any real issues in the proceedings as between the parties. In Gawler v Raettig **[2007] EWCA Civ 1560**, the Court of Appeal refused permission to appeal on the ground that the issue it would raise was academic as between the parties. In his judgment, Sir Anthony Clarke MR gave helpful guidance as to the correct approach in such cases. He said, at para 36, that before an appeal could proceed in those circumstances, the court must be satisfied that it would be in the public interest for the projected appeal to proceed, but he added that it would be 'a very rare event, especially where the rights and duties to be considered are private and not public'.

> None the less, in the following paragraph he emphasised that all must 'depend upon the facts of the particular case' and that he did not 'intend to be too prescriptive'." (As in the original)

[57] From the above cases, it is clear, that the types of issues that may deemed to be in the public interest are not set in stone. I have noted that regulation 26 of the Regulations is similar in all material respects to regulation 26 of the Police Service Regulations. However, unlike regulation 26 of the Regulations, the provision in the Police Service Regulations has been the subject of judicial interpretation by this court on numerous occasions. The latter provision has been held to apply where an officer is being retired for cause. This runs counter to the findings of the Full Court in the instant case. The current state of affairs is, in my view, likely to lead to confusion and, therefore, needs to be considered and settled. In this regard, I have noted that Mr Wildman, in his submissions to this court, asserted that regulation 26 was not only applicable to situations where a public officer's proposed retirement was for "cause". This is in contrast to the written submissions of Mrs Gardner subsequently filed on her own behalf in respect of the issue of whether the grounds of appeal relating to regulation 26 were now of academic interest. In her submissions, Mrs Gardner stated that the said regulation was only relevant where the proposed retirement was for "cause". That submission is *ad idem* with that advanced on behalf of the appellants. This is a matter of statutory interpretation. It is also a matter of public law and, as such, satisfies the first limb of the test in **Salem**, which requires that there must be an issue involving a public authority as to a question of public law.

[58] The second limb, which now arises, is whether the resolution of this issue is in the public interest. The current state of affairs, in my view, has implications for the civil service as a whole, as the uncertainty surrounding the interpretation of regulation 26 of the Regulations is undesirable. Is that sufficient to make it one of public interest?

[59] In **London Artists**, the following definition was posited by Lord Denning at page 198:

> "There is no definition in the books as to what is a matter of public interest. All we are given is a list of examples, coupled with the statement that it is for the judge and not for the jury. I would not myself confine it within narrow limits. **Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or to others; then it is a matter of public interest** on which everyone is entitled to make fair comment. A good example is **South Hetton Coal Co Ltd v. North-Eastern News Association Ltd ...**[1894] 1 Q.B. 133." (Emphasis supplied)

[60] Also in **South Hetton Coal Company, Limited v North-Eastern News Association, Limited (South Hetton)** [1894] 1 QB 133, the court was required to consider whether the publication of the sanitary condition of a large number of cottages that were let by the proprietors to their workmen was a matter of public interest, fair comment on which was not libelous. In deciding whether this subject was a matter of public interest, the court stated at page 143:

> "But is the matter commented on one of public interest? This is a question for the Court. The attack upon the plaintiffs is in respect of the sanitary condition of their property, involving the health, comfort, and well-being of over two thousand human beings. The sanitary condition of this large population is placed under the control of a public body who do not interpose. Can it be said that this alleged state of things is not a matter of grave public interest? It may be that there is no case in the books holding a matter like this one of public interest; but I am clearly of [the] opinion that a matter like this now before the Court may be made the subject of hostile criticism and of hostile animadversion, provided the language of the writer is kept within the limits of an honest intention to discharge a public duty. I agree with the Lord Chief Justice in holding this a matter of public interest."

And at page 144:

> "The first question is whether the subject of this article is a matter of public interest, upon which it is lawful to make fair criticism or comment. Considering the extent of colliery business in this country, the enormous number of men employed in it, the legislative provisions that have of necessity

> been made concerning the mode of carrying it on, as for instance in the ventilation of coal mines, considering the number of people in this particular village, the fact that the houses in which they live are supplied by the colliery proprietors rent free as part of the colliers' wages, that this very village is within the jurisdiction of a rural sanitary authority, and that the article complained of seems from the commencement of it to be one of a series [of] dealing[s] with the homes of pitmen in the county of Durham, I am of [the] opinion that the subject of the article is a matter of public interest, and that a fair criticism upon such a subject would not be a libel at all…."

[61] From these authorities, it appears that the term "public interest" is not a narrow and definite concept. Rather, the specific circumstances must be taken into consideration to determine whether the issue is one that concerns the public at large and one in which they would be interested and concerned.

[62] In this regard, I take judicial notice that a considerable percentage of the workforce in this country consists of public servants. The Regulations and the Staff Orders prescribe how certain matters, including their appointment and the termination of their service, are to be dealt with. I am also mindful that "the jurisdiction of the court is not to declare law generally or to give advisory opinions" (see **Coke** at paragraph [71]). The Full Court has ruled that regulation 26 is applicable where an officer is being retired due to reorganization as the matter could not "suitably" be dealt with under any of the other regulations. In so doing, the term "public interest" was found to encompass the smooth administration of justice. Such a situation is, in my view, unlikely to arise very often. However, it is my opinion that the resolution of this issue will benefit the smooth administration of the public service. That is an important matter within the public interest.

[63] Public servants work in many spheres of Jamaican life and interface with the public daily. Uncertainty as to the circumstances in which they may be retired in the public interest is not desirable. They should be able to predict with some amount of certainty when such action by the Commission would be warranted. Whilst it may be argued that the affected officer would be entitled to a hearing whether or not regulation 26 is

engaged, the invoking of that procedure conveys that the said officer has either done something wrong or is otherwise unfit to carry out his or her duties or any other duties in the public service. Uncertainty in those circumstances may affect the morale of public servants. In the circumstances, I agree with counsel for the appellants that the interpretation of regulation 26 is not solely of academic interest.

[64] With respect to the issue of the severance of section 15A(1), which arises on ground of appeal (j), the effect of the Full Court's ruling is that the term for which the Director of Court Administration can be appointed has been removed from the Act and the Chief Justice is no longer required to be consulted in the appointment or approve the re-engagement of the Director of Court Administration. Mrs Gardener is correct that the resolution of this issue is clearly unrelated to the dispute between the parties.

[65] Section 125(1) and (2) of the Constitution, which governs the appointment of public officers, states:

> "125. -(1) Subject to the provisions of this Constitution, power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in any such offices is hereby vested in the Governor-General acting on the advice of the Public Service Commission.
>
> (2) Before the Public Service Commission advises the appointment to any public office of any person holding or acting in any office power to make appointments to which is vested by this Constitution in the Governor General acting on the advice of the Judicial Service Commission or the Police Service Commission, it shall consult with the Judicial Service Commission or the Police Service Commission, as the case may be."

[66] Consequent on the severance of section 15A(1) of the Act, the appointment of the Director of Court Administration would remain governed by section 125(1). The appellants have accepted that the Full Court's judgment pertaining to the requirement for the commission to consult with the Chief Justice in the appointment of the Director of Court Administration and to obtain the approval of the holder of that office for the renewal

of the contract of that officer contravened section 125 of the Constitution. They have asked this court to restore the time period for which the appointee may remain in office. The severance of section 15A(1) has resulted in the length of that person's engagement being the same as that for any other public servant. It is recognised that the resolution of the resulting state of affairs will have no impact on Mrs Gardner's case. It is a solely academic matter between the parties. Although Parliament may not have intended for the tenure of the appointee to the above post to be the same as that for civil servants, generally, it is not a matter that can properly be described as being in the public interest. Therefore, in the circumstances of the case and in light of the concessions made, whether or not the Full Court erred in severing the section is now of academic interest and there is no public interest consideration that would warrant investigation by this court. In any event, the issue raised as to the effect of the judgment of the Full Court relating to the period of appointment of the Director of Court Administration occasioned by the severance of section 15A(1) of the Act can be addressed by way of a statutory amendment. In the circumstances, only grounds [a] and [b] need to be considered by this court.

Grounds [a] and [b]

[a] The Full Court erred in law in finding that regulation 26 of the Public Service Regulations applied to the circumstances of the respondent's case and that the respondent was entitled to the benefit of the procedure set out therein in circumstances where she was being retired on the ground of reorganization as a result of her post being redundant consequent on the amendment to the Judicature (Supreme Court) Act.

[b] The Full Court erred in its interpretation of the term "public interest" as used in regulation 26 of the Public Service Regulations.

Submissions for the appellant

[67] Ms Althea Jarrett accepted that Mrs Gardner ought to have been afforded the opportunity to be heard in the matter of her compulsory retirement, and that was not done. It was, however, submitted that this right did not make regulation 26 of the Regulations applicable to the circumstances of this case. Counsel argued that the

regulation was inapplicable, as Mrs Gardner was not retired for cause but rather as a result of the reorganization of the court's administration as provided in the Judicature (Supreme Court) (Amendment) Act 2016.

[68] Counsel posited that regulation 26 was only applicable in circumstances where there was some level of dissatisfaction with the public officer. This, it was submitted, was clear given the language of the regulation, which refers regulations 42 and 43 (which deal with disciplinary proceedings). Reliance was placed on the case of **Jones and Others v Solomon** (1989) 41 WIR 299 ('**Jones v Solomon**'), where a similar provision was interpreted as requiring "reasonable cause" for the retirement in the public interest, of a public officer who was the subject of adverse reports.

[69] Ms Jarrett argued that, whilst our courts have not yet had the opportunity to interpret regulation 26 of the Regulations, this court could have regard to regulation 26 of the Police Service Regulations where the language is quite similar if not almost identical. The latter regulation, she said, has been found to be applicable in cases where the police officers were the subject of adverse reports and their retirement was for "matters of cause". Specific reference was made to **Regina ex parte Dwayne Mullings v the Police Service Commission and the Attorney General for Jamaica** ('**Dwayne Mullings**') (unreported) Court of Appeal, Jamaica, Supreme Court Civil Appeal No 18/2007, judgment delivered 23 February 2009, in support of that submission.

[70] Reference was also made to **Leroy Thompson v The Commissioner of Police and the Attorney General of Jamaica** [2012] JMSC Civ 166 ('**Leroy Thompson**'), **Nyoka Segree v Police Service Commission** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 142/2001, judgment delivered 11 March 2005 ('**Nyoka Segree**') and **Kenyouth Handel Smith v The Police Service Commission & Anor** (unreported), Court of Appeal, Jamaica, Supreme Court Civil Appeal No 60/2005, judgment delivered 10 November 2006 ('**Kenyouth**').

[71] It was submitted that, in the above cases, regulation 26 of the Police Service Regulations was found to be applicable as in each case there was reasonable cause to retire the police officer. This reasonable cause amounted to something which made the officer unsuitable to remain in his position (see also **Pandy v Judicial and Legal Service Commission** 2009 4 LRC 340). Ms Jarrett argued that given the similarity between the two regulations, the court ought to adopt the interpretation given to the provision in the Police Service Regulations. She submitted that, based on that interpretation, regulation 26 of the Regulations was inapplicable, as Mrs Gardner was not dismissed as a "matter of cause".

Submission for the respondent

[72] Mr Wildman submitted that the interpretation of regulation 26 of the Regulations should not be limited to matters where the retirement of the public officer was for cause. Rather, the regulation clearly applied in the circumstances where a party has satisfied the requirements therein as set out at paragraph [96] of the judgment of the Full Court. He argued that, as Mrs Gardner had satisfied those criteria, the appellants were obligated to ensure that a hearing was held prior to making any recommendation to the Governor-General for her to be retired from the public service. He stated that at such a hearing, Mrs Gardner would have had an opportunity to make representations as to why she should not be retired from the public service. This procedure, he said, was consistent with that set out in the common law and the Constitution (see **McLaughlin**).

Discussion and analysis

[73] The Commission's power to remove a public officer from office is conferred by section 125(1) of the Constitution. Regulation 26 of the Regulations, which speaks to removal from office by retirement in the public interest, states as follows:

> "26 (1) Notwithstanding the provisions of regulations 42 and 43, where it is represented to the Commission or the Commission considers it desirable in the public interest that an officer ought to be required to retire from the public service on grounds which cannot suitably be dealt with under

> any of these Regulations it shall call for a full report from the Head of every Ministry or Department in which the officer has served during the last preceding ten years.
>
> (2) If after considering such reports and giving the officer an opportunity of submitting a reply to the grounds on which his retirement is contemplated, and having regard to the conditions of the public service, the usefulness of the officer thereto, and all the other circumstances of the case, the Commission is satisfied that it is desirable in the public interest so to do, it shall recommend to the Governor-General that the officer be required to retire."

[74] Regulations 42 and 43 deal with misconduct not warranting dismissal and proceedings for dismissal, respectively.

[75] Regulation 26 of the Police Service Regulations, which is similar to the above regulation, states:

> "(1) Notwithstanding the provisions of regulation 46 or regulation 47 where it is represented to the Commission or the Commission considers it desirable in the public interest that any member ought to be required to retire from the Force on grounds which cannot suitably be dealt with by the procedure prescribed by regulation 46 or 47 it shall require the Commissioner to submit a full report.
>
> (2) If after considering the report of the Commissioner and giving the member an opportunity of submitting a reply to the grounds on which his retirement is contemplated, and having regard to the conditions of the Force, the usefulness of the member thereto, and that it is desirable in the public interest so to do, it shall recommend to the Governor-General that the member be required to retire on such date as the Commission may recommend."

[76] I have noted that nowhere in the Regulations is a definition provided for the term "public interest". As was observed by the Full Court, there appears to be no case law in our jurisdiction which deals with the interpretation of the term "public interest" in regulation 26 of the Regulations.

[77] The approach of the courts in matters of statutory interpretation is to determine the natural and ordinary meaning of the words used. In **Special Sergeant Steven Watson v The Attorney General and Others** [2013] JMCA Civ 6, Brooks JA (as he then was), at paragraph [19], cited with approval Lord Reid's statement on this issue, in **Pinner v Everett** [1969] 3 All ER 257 at 258I, where he stated thus:

> "19. In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or phrase. We have been warned again and again that **it is wrong and dangerous to proceed by substituting some other words for the words of the statute**." (Emphasis as in the original)

[78] This statement of the applicable principles was reiterated by Brooks JA in the more recent decision of **Jamaica Public Service Company Limited v Dennis Meadows and others** [2015] JMCA Civ 1, where at paragraph [54], the court quoted page 49 of Cross Statutory Interpretation, 3rd edition, in which the author summarized the major principles of statutory interpretation as follows:

> "[54] The learned editors of Cross' Statutory Interpretation 3rd edition proffered a summary of the rules of statutory interpretation. They stressed the use of the natural or ordinary meaning of words and cautioned against 'judicial legislation' by reading words into statutes. At page 49 of their work, they set out their summary thus:
>
> > '1. The judge must give effect to the grammatical and ordinary or, where appropriate, the technical meaning of words in the general context of the statute; he must also determine the extent of general words with reference to that context.
> >
> > 2. If the judge considers that the application of the words in their grammatical and ordinary

> sense would produce a result which is contrary to the purpose of the statute, he may apply them in any secondary meaning which they are capable of bearing.
>
> 3. The judge may read in words which he considers to be necessarily implied by words which are already in the statute; and he has a limited power to add to, alter or ignore statutory words in order to prevent a provision from being unintelligible, absurd or totally unreasonable, unworkable, or totally irreconcilable with the rest of the statute....'"

Brooks JA stated that the above "summary is an accurate reflection of the major principles governing statutory interpretation".

[79] In **Jones v Solomon**, which was relied on by the appellants, the respondent was retired in the public interest after he failed to make representations to the Public Service Commission ('the PSC') within a specified time. He applied for judicial review of that decision, and the court ruled that the PSC had failed to take into account matters it was required to take into account by virtue of regulation 54. Consequently, an order of certiorari was granted quashing the decision of the PSC. On appeal, the Court of Appeal of Trinidad and Tobago found that the power to retire an officer in the public interest under regulation 54 was grounded in section 121(1) of the Constitution of Trinidad and Tobago, which gave the PSC the power to remove and exercise disciplinary control over public officers. That section required reasonable cause, which warranted the officer's removal from office to be shown, before the said officer could be removed from office.

[80] Edoo JA, who delivered the judgment of the court, relied on the well-known case of **Thomas v Attorney General** (1981) 32 WIR 375. He stated at pages 324-325:

> "**Inherent in the power to remove an officer under section 121(1) of the Constitution, the attorney submitted, was the power to require an officer to retire in the public interest.**
>
> Section 121(1) of the Constitution provides:

> 'Subject to the provisions of this Constitution, power to appoint persons to hold or act in offices to which this section applies, including power to make appointments on promotion and transfer and to confirm appointments and *to remove and exercise disciplinary control* over persons holding or acting in such offices shall vest in the Public Service Commission.'

In *Thomas v Attorney-General* (1981) 32 WIR 375 the Privy Council, in considering whether a Superintendent of Police was properly dismissed from the Police Service, had cause to deal with section 99(1) of the 1962 Constitution which was substantially similar to section 121(1) of the Constitution. Lord Diplock speaking for the Board said (at page 381):

> 'The whole purpose of Chapter VIII of the Constitution which bears the rubric 'The Public Service' is to insulate members of the Civil Service, the Teaching Service, and the Police Service in Trinidad and Tobago from political influence exercised directly upon them by the Government of the day. The means adopted for doing this was to vest in autonomous commissions, to the exclusion of any other person or authority, power to make appointments to the relevant service, promotions and transfers within the service and power to remove and exercise disciplinary control over members of the service.'

I may mention that the provisions of which he was speaking in Chapter VIII of the 1962 Constitution, are almost identical with the provisions contained in the Constitution.

In dealing with the expression 'remove and exercise disciplinary control over', Lord Diplock said (at page 384):

> **'To 'remove' from office in the police force in the context of section 99(1), in their Lordships' view, 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**.'

He continued (at page 384):

> 'In their Lordships' view there are overwhelming reasons why "remove" in the context of 'to remove and exercise disciplinary control over' police officers in section 99(1) (and in the corresponding sections *relating to 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.' [*emphasis supplied*]

On the same question of removal, Lord Diplock said (at page 390):

> 'Before turning to those provisions of the Police Service Regulations 1966, the validity of which has been attacked by the plaintiff, their Lordships should say something about what is inherent in the grant itself of powers 'to remove and exercise disciplinary control over' members of the Police Service quite apart from any Regulations that may be made under section 102(1) and (2) of the Constitution. Their Lordships have already explained why 'remove' must be construed as meaning removed for what in the judgment of the commission constitutes reasonable cause. Reasonable cause is not confined to wilful misconduct; it would embrace reasons such as ill-health or unsuitability of temperament or even some personal characteristic, any one of which, through no fault of his own, had rendered a particular officer unfitted [sic] to perform with reasonable efficiency the duties of a policeman. Removal for causes such as these is included among the functions of the commission to decide what causes justify removal even though it is not carried out in the exercise of the commission's powers of disciplinary control.'

> In my judgment, the passages to which I have referred and which I have quoted require neither analysis nor comment, and have cogently shown that the commission's statutory power to retire an officer in the interest of the public is an instance of the power of removal vested in the commission by virtue of section 121(1) of the Constitution, and not by virtue of any Regulations.
>
> I only wish to refer finally to what Lord Diplock had to say in *Thomas v Attorney-General* at page 392 to give the *quietus* to this ground of appeal:
>
> > '… whereas, as their Lordships have explained, the true legal source of the power the commission exercised over the plaintiff was section 99 of the Constitution itself'." (Emphasis supplied)

[81] Section 121(1) of the Constitution of Trinidad and Tobago is similar in all material respects to section 125(1) of the Constitution. Regulation 54(1) and (2) of the Trinidad and Tobago Public Service Commission Regulations is similar to regulation 26(1) and (2) of the Regulations and regulation 26 of the Police Service Regulations.

[82] Regulation 26 of the Police Service Regulations has been interpreted by this court as requiring "reasonable cause" for the taking of such action. In **Dwayne Mullings**, the court was tasked with considering whether regulation 26 had been properly invoked in circumstances where the nine appellants had been recommended for retirement based on confidential information that they were involved in drug smuggling. Cooke JA, who delivered the decision of the court, stated at paragraph 7:

> "7. Retirement in the public interest is essentially that such person is unsuitable to continue to be a member of the Jamaica Constabulary Force. This unsuitability is not solely to be determined in a situation where strict proof is forthcoming but also in circumstances where there is material which rises above mere suspicion that the behaviour of a member of the force is unacceptable…**retirement in the public interest is quite different from dismissal based on specific charges. Whereas the latter is confined within defined parameters, the former is subject to great latitude, subject only to the pending caveat that any such**

> **retirement must be for reasonable cause**." (Emphasis supplied)

[83] This approach is also exemplified by the cases of **Leroy Thompson**, **Nyoka Segree** and **Kenyouth**.

[84] In **Nyoka Segree**, the appellant was unsuccessful in her attempt before the Full Court to quash the decision of the Commission to retire her from the Jamaica Constabulary Force in the public interest. Upon investigation, the Commission became aware that the appellant was involved in drug trafficking. This court, in analyzing regulation 26, said at page 9:

> "Regulation 26 provides the appropriate procedure where a prior decision has been taken that it is desirable for an officer to be retired in the public interest. It is applicable where the matter requires a speedy disposal in the public interest."

[85] In **Kenyouth**, the appellant, who was a police officer, had been retired in the public interest for soliciting the sum of $150,000.00 from a citizen to prevent him being placed in custody in relation to the loss of his firearm. In commenting on regulation 26 at paragraph 7, this court observed that:

> "7. The focus of Regulation 26 is the retirement in the public interest. Proceedings under Regulation 47 which may lead to dismissal, requires a more elaborate procedure in comparison with proceedings pursuant to Regulation 26. This is really understandable since retirement in the public interest calls for expedition. The sooner an unworthy member of the Jamaica Constabulary Force is properly retired in the public interest, the better it is for our society…"

[86] It is clear that this court has been consistent with finding that regulation 26 was properly invoked by the Police Service Commission in circumstances where the police officers were retired based on circumstances that may be described as constituting reasonable cause. I see no reason to ascribe a different interpretation to regulation 26 of the Regulations.

[87] In the circumstances, I agree with counsel for the appellants that the Full Court erred when it found that regulation 26 was applicable to Mrs Gardner's case. Her retirement from the public service was recommended as a result of the reorganization of a particular branch of the public service. I am also of the view that the Full Court erred in its interpretation of the term "public interest".

[88] I have arrived at this conclusion, firstly, by taking into account the ordinary meaning of the term "public interest", as was adopted in the abovementioned cases. Secondly, I have accepted the submissions of counsel for the appellants that the interpretation given to regulation 26 of the Police Service Regulations by this court, should be adopted in respect of the interpretation of regulation 26 of the Regulations.

Costs

[89] Costs follow the event. The position which the appellants adopted at the commencement of the hearing meant that the respondent was successful in the substantive matter in this appeal and as such there is no reason to depart from the usual rule as to costs. Mrs Gardner is therefore entitled to be awarded her costs in defending the appeal.

Conclusion

[90] In light of the foregoing, I propose the following orders:

1. The appeal is allowed in part.

2. The judgment of the Full Court made on 19 April 2018 granting the order of certiorari quashing the decision of the commission to retire the respondent, Mrs Gardner, in the public interest is affirmed.

3. The manner in which the respondent was purportedly retired was not contrary to regulation 26 of the Public Service Regulations. Regulation 26 is to be interpreted as applying to the retirement of a public officer in circumstances where there is a dissatisfaction with a

public officer or where the public officer is unsuitable or unfit to remain in the public service.

4. The appeal concerning order number three of the said judgment of the Full Court is dismissed as the issue of the severance of section 15A(1) is now solely of academic interest.

5. Costs of the appeal to the respondent to be agreed or taxed.

P WILLIAMS JA

ORDER

1. The appeal is allowed in part.

2. The judgment of the Full Court made on 19 April 2018 granting the order of certiorari quashing the decision of the Public Service Commission to retire Mrs Gardner, the respondent, in the public interest is affirmed.

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