

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL
OF THE REPUBLIC OF TRINIDAD AND TOBAGO

BETWEEN:

FAVIANNA GAJADHAR

Appellant

– and –

ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

STATEMENT OF FACTS AND ISSUES

[1] indicates pages of the record of proceedings

(I) FACTS

1. The Appellant appeals against the decision of the Court of Appeal dated 25 November 2024, per Moosai, Lucky and Dean-Armorer JJA. The Appellant was granted conditional leave to appeal to the Judicial Committee of the Privy Council on 7 February 2025 [396]-[399] and final leave on 23 June 2025 [401]-[402]. The first instance judge, Seepersad J, sets out the key facts at paragraphs 5 to 19 of his judgment [154]-[157].

Background facts

2. On 3 July 2000, the Appellant was appointed to the rank of Prison Officer I in the Trinidad and Tobago Prison Service [403]-[406]. The instant case began after the Appellant took periods of leave from the Prison Service. From October

2004, she took periods of sick leave after she suffered a back injury in a fall at the Women's Prison, Golden Grove [502]-[505]. From 27 April to 18 September 2006, the Appellant took maternity leave and related sick leave [511]-[512]. At the end of her maternity leave, the Appellant was prevented from resuming duties as she was informed that she had not provided sufficient sick leave certificates [512]-[515]. By a letter dated 27 September 2006, the Appellant informed the Commissioner of Prisons that she wanted to resume active duties and provided details of sick leave certificates [564]-[565]. On 18 April 2008, the Public Service Commission ('the Commission') wrote to the Appellant proposing to declare her as having resigned from office as it considered that she had been absent from duty with effect from 27 April 2006 [543]. By a letter dated 10 December 2008, the Commission confirmed that it had declared the Appellant to have resigned from her office with effect from 21 June 2007 [578].

3. The Appellant successfully challenged this decision in CV2010-00326 *Favianna Gajadhar v The Public Service Commission*. Judgment was handed down on 27 June 2012 by Seepersad J, with the Court finding *inter alia* that the Commission's decision was unreasonable and the procedure adopted by the Commission breached the principles of natural justice [475]-[508]. The Commission appealed this judgment, but on 31 January 2014 the Court of Appeal (Jamadar, Beraux, Mohammed JJA) upheld the High Court's decision and remitted the matter to the Commission for its review (*Civil Appeal No. P170 of 2012 Favianna Gajadhar v The Public Service Commission*) [457]-[474].
4. On 24 October 2016, the Commission wrote to the Appellant stating that it had decided that its decision that she had resigned from office with effect from 21 June 2007 should stand [596]-[597]. The Appellant filed a further application for judicial review on 20 January 2017, which was discontinued on 19 July 2017 after the Commission raised several new issues in response to the claim and the parties agreed that the Appellant should be permitted to make representations on the new issues before the Commission again reconsidered its decision [611] and [599]-[600]. The Appellant made representations to the Commission on 7 September 2017 [647]-[661] and, by a letter dated 9 November 2017, the Commission informed the Appellant that it had reviewed

her representations and affirmed its decision that she resigned her office with effect from 21 June 2007 [665].

5. The Appellant successfully challenged this decision in *C.V. 2018-01818 Favianna Gajadhar v The Public Service Commission*. In a judgment given on 12 June 2019, Seepersad J held that the 9 November 2017 decision was illegal, irrational, unfair, null and void and of no effect, and that the Commission should reconsider its decision [737]-[761]. The Commission appealed this judgment, but the Court of Appeal dismissed the appeal on 1 April 2021 [684]-[686].
6. On 15 June 2021, the Appellant's Attorney at Law sent a Pre-Action Protocol letter to the Commission requesting the Appellant's reinstatement with payment of full arrears in salary, allowances and/or benefits from 21 June 2007 [763]-[768]. The Commission replied on 4 April 2022. It stated that it had decided the Appellant should be allowed to resume duty with immediate effect and that the Commissioner of Prisons had been instructed to take steps to appropriately classify the Appellant's "*leave of absence*" from 21 June 2007 [774].
7. The Appellant's Attorney at Law replied with a Pre-Action Protocol letter dated 22 April 2022 which queried the reference to the Appellant's "*leave of absence*". The letter stated that the Appellant had not been on leave but rather had been unlawfully prevented from performing her duties. The letter requested payment of the Appellant's arrears of salary, allowances, and/or benefits from 21 June 2007 [776]-[780].
8. After receiving no response, the Appellant filed the instant claim on 8 June 2022 [10]-[40]. The following day, the Appellant's Attorney at Law received a letter from the Commission, dated 23 May 2022, which stated that the Commission had rescinded its decision to instruct the Commissioner of Prisons to take steps to appropriately classify the Appellant's "*leave of absence*" [799]. This letter did not discuss the outstanding arrears of salary, allowances, and/or benefits.

High Court Proceedings

9. By constitutional motion dated 8 June 2022 and submissions dated 8 September 2023 **[10]-[106]**, the Appellant sought:

- a. A declaration that the Appellant's right to the protection of the law and natural justice under section 4(b) of the Constitution of Trinidad and Tobago ('the Constitution') had been breached **[11]**. This was sought on the ground that the Commission's failure to pay the Appellant arrears of salary, allowances and/or benefits was unfair, arbitrary and irrational, and the Commission was undermining the integrity of the several High Court and Court of Appeal judgments in the Appellant's favour **[35]-[39]**.
- b. A declaration that the delay in paying the Appellant's arrears of salary, allowances and/or benefits breached her right to enjoyment of property and the right not to be deprived thereof except by due process of the law under section 4(a) of the Constitution **[11]** and **[35]**.
- c. A declaration that the Appellant's right under section 129(4) of the Constitution not to have a penalty imposed on her except as a result of disciplinary proceedings had been breached **[11]**.
- d. Damages inclusive of loss of earnings in the sum of \$2,821,744.54, vindictory damages of \$300,000-\$500,000 (including aggravated damages), damages for distress and inconvenience of \$75,000-\$125,000, and damages for loss of a chance to be promoted **[105]**.
- e. Costs certified fit for Senior and Junior Counsel **[11]**.
- f. Such further relief orders and directions or writs as the Court might consider just and/or appropriate as the circumstances of the case warrants **[11]**.
- g. Interest on damages at such rate and for such period as may be just **[11]**.

10. In written submissions filed on 29 September 2023, the Commission admitted that the Appellant was entitled to be paid her arrears of salary but denied that the delay in making this payment was a breach of her constitutional rights [107]. The Commission submitted that the long litigation history and the Covid-19 pandemic contributed to administrative delays in its response and the reinstatement of the Appellant [210]-[211]. The Commission also submitted that, before the Appellant's arrears of salary could be paid, computation of her salary, allowances and benefits needed to take place, and this computation must then be audited [201]. There was no intentional nor deliberate decision to deprive the Appellant of her salary, benefits and increments, and the delays in payment were administrative delays which were being dealt with [113]. The evidence shows that it was always the Commission's intention to comply with the Court's orders, and the protracted litigation was part of the Appellant's right to protection of the law since it afforded her access to the judicial system [113] and [115]. In addition, the Commission submitted that the Appellant had already sought a declaration that her rights under section 129(4) of the Constitution had been violated in the previous High Court and Court of Appeal case, and so to raise this issue again was an abuse of process [121]-[122].
11. As to damages, the Commission argued that the Appellant had not proved entitlement to damages aside from her loss of earnings [129]. It submitted that no additional award of vindictory damages was necessary and Appellant's claim for loss of chance and damages for distress and inconvenience was speculative and unproven [125]-[129].

Judgment of the High Court

12. The matter came before Seepersad J who gave judgment on 26 October 2023. The Court's judgment can be found at [153]-[184] and the order at [185]-[186]. The Court found for the Appellant on all grounds, as follows.

Breach of the Appellant's rights under section 4(a) of the Constitution

13. The Court noted that the Respondent had admitted \$2,821,744.54 was due to the Appellant as arrears of salary, allowances and/or benefits, less all relevant statutorily mandated deductions. It found that the repeated assertion as to the need for the Prison Service to conduct an audit before this sum could be paid was likely a delay tactic, designed to prolong the payment process (para 23, [158]) and not borne out in the evidence. The Court noted that significant time had elapsed since the legal claim was instituted and yet no such audit had been engaged, and the Respondent had not sought to adduce evidence to justify or explain the policy or practice with respect to the audit (para 23, [158]).
14. The Court also found that the Respondent's attempt to attribute the delay in payment to the pandemic was devoid of merit, as significant aspects of the relevant verification and calculation exercises could have been engaged by the responsible officials working from home. The Court concluded that the evidence suggested that the system adopted to facilitate payment was either grossly inefficient or designed to frustrate the Appellant (para 28, [160]).
15. The Court therefore found that the Appellant had been deprived of her arrears of salary, allowances and/or benefits without due justification (para 28, [160]). Consequently, the Appellant was denied the right to the enjoyment of her property without due process in breach of her rights under section 4(a) of the Constitution, due to the failure to pay her arrears and failure to address this situation with necessary alacrity (para 29, [160]).

Breach of the Appellant's rights under section 4(b) of the Constitution

16. The Court found that the Appellant's right to protection of the law under section 4(b) of the Constitution had been breached. This was because there was a consistent and continuous failure and/or refusal by the Commission to honour its obligations following the judgment of the Court of Appeal and there was no readily apparent, credible or rational justification for the position adopted by the Commission, which amounted to an arbitrary exercise of power (paras 31 and 36, [161-162]).

Breach of the Appellant's rights under section 129(4) of the Constitution

17. The Court concluded that the Commission's decision to deem that the Appellant had resigned amounted to the infliction of a penalty which was imposed upon her in the absence of any disciplinary hearing. This was a fundamentally unfair exercise of power contrary to section 129(4) of the Constitution, particularly when combined with the Commission's steadfast adherence to its position to that the Appellant had resigned (para 37, **[162]**).

Quantum of damages

18. The court awarded the following sums for breach of constitutional rights:

- a. \$275,000 for compensatory damages comprising \$150,000 for loss of chance (i.e. the Appellant's loss of the chance to be considered for a promotion) (para 78 **[176]**) and \$125,000 for distress and inconvenience, including an uplift for aggravated damages (para 86, **[177]**).
- b. \$350,000 for vindictory damages (para 105, **[183]**).

19. The Court ordered the Respondent to pay the Appellant \$2,821,744.54 for loss of earnings less all relevant statutorily mandated deductions, such as NIS and PAYE (para 107(d), **[184]**). The Court ordered interest on the sum of \$2,821,744.54 to accrue at a rate of 2.5% from the date of the filing of the claim until judgment and to accrue on the sums awarded in the judgment from the date of judgment until payment at the statutory rate of interest (para 107(g), **[184]**).

Costs

20. The Court ordered that the Respondent should pay the Appellant's costs certified fit for one Senior Counsel and two Junior Counsels (para 107(h), **[184]**).

Payment of backdated salary, allowances and benefits

21. On 31 May 2024, the Appellant was paid \$1,572,160.68 as backdated salary, allowances and benefits. A breakdown of how this sum was calculated was not provided at the time, but has subsequently been explained in an affidavit of 1 October 2024, in the course of the proceedings in the Court of Appeal. Interest on that sum, totalling \$56,111.28 was paid on 10 April 2025. Payment of the compensatory damages, damages for loss of chance or vindicatory damages currently remains pending.

Court of Appeal proceedings

22. The Respondent filed a Notice of Appeal against the High Court's judgment on 8 December 2023 [188]-[195], followed by written submissions on 5 July 2024 [197]-[238]. The Respondent appealed on four grounds:

- a. The judge erred in finding a breach of the Appellant's rights under section 4(a) of the Constitution [193]. The delay in paying the Appellant her arrears of salary, allowances and/or benefits amounted to no more than a delay and not a deprivation of a substantive benefit [194]. There was no evidence to support the trial judge's factual conclusion that there had not been due process, and the judge failed to attach the relevant weight to the Respondent's undisputed evidence on this point [199]-[205]. The judge also erred in fact when he reached the conclusion that there was an attempt to attribute the delay in payment to the Covid-19 pandemic, and engaged in speculation when he stated that significant aspects of the relevant verification and calculation exercises could have been engaged by the responsible officials working from home [205].
- b. The judge took into account irrelevant considerations when awarding damages for distress and inconvenience [206]-[213].
- c. The judge considered the same factors twice when awarding compensatory and vindicatory damages resulting in double

compensation [213]-[217] and awarded an inordinately high sum of vindictory damages [217]-[223].

- d. In awarding the Appellant vindictory damages, the judge failed to consider that she had been re-instated in circumstances where the Court of Appeal determined that she had no legitimate expectation to such reinstatement [223]-[224].

23. In submissions filed on 23 August 2024, the Appellant contended that:

- a. The judge was correct to find that there was a breach of the Appellant's rights under section 4(a) of the Constitution. The Respondent did not file evidence giving reasons for the failure to pay the arrears of salary, allowances and/or benefits. No evidence was filed stating or explaining the need for an audit or demonstrating how or why the audit process prevented payment. On 1 April 2021, the Court of Appeal had ordered the Commission to reconsider the matter of the Appellant's employment, which it failed to do for over a year. The Respondent only conceded that the Appellant was entitled to backdated salary, allowances and/or benefits after a claim was initiated for the failure to pay these sums. The Respondent's assertion that there was a need for an audit was only made after legal action was initiated, and this assertion was unsupported by evidence. The judge's statements as to the pandemic and work from home policies was not the focus of his finding of a breach of section 4(a). Instead, this finding was based on his unchallenged conclusion that the need for an audit was not substantiated by the evidence before him [258]-[264].
- b. The award of damages for distress and inconvenience was properly made and based on analysis of the evidence before the judge [264]-[273].
- c. The award of vindictory damages was properly made and the sum awarded was a reasonable middle ground [276]-[285].

24. The Court of Appeal heard the case on 25 November 2024 and gave oral judgment the same day [384]-[393]. The Court allowed the appeal in part, finding that the Appellant's right under section 4(a) of the Constitution had not been breached. The Court found that there was no evidential basis to suggest that there was any design by the Respondent to frustrate the Appellant by delaying payment of her arrears of salary, allowance and/or benefits. The Court also found that there was no culpable delay, nor was the length of the delay so egregious as to be a breach of section 4(a) [386].

25. The Respondent was ordered to pay the Appellant 50% of the costs of the appeal, certified for one senior and one junior counsel, as the appeal had been successful in part [392]-[393]. Save and except for the finding that there was no breach of the right under section 4(a) of the Constitution, the Appellant was successful in maintaining the other relief granted by the trial judge. The order of the Court of Appeal can be found at [394]-[3895].

(II) **ISSUES**

26. There are two issues:

- a. Was the Court of Appeal wrong to set aside the trial judge's finding that the Appellant's right not to be deprived of property under section 4(a) of the Constitution was violated?
- b. Whether the Court of Appeal erred in principle in reducing the Appellant's costs of the appeal by 50%

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PRECIS

1. This case concerns the deprivation of the Appellant's backdated salary, allowances and/or benefits after she was prevented from resuming her employment as Prison Officer I in September 2006 following maternity leave. Successive High Court and Court of Appeal judgments found that the Public Service Commission acted unlawfully in deeming that she had left office, and the Appellant was reinstated in her role on 4 April 2022.
2. On 8 June 2022, the Appellant filed a constitutional motion that the deprivation of her salary breached her rights not to be deprived of property under s4(a); to protection of the law under s4(b); and not to be subject to penalty under s129(4) of the Constitution. She sought non-pecuniary damages, and loss of past and future earnings. The High Court found in the Appellant's favour, but the Court of Appeal reversed this finding in part, ruling that (i) the Appellant's rights under section 4(a) had not been breached and (ii) the Respondent should pay the Appellant only 50% of the costs of the appeal.
3. The Appellant appeals both of the Court of Appeal's findings.

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CHRONOLOGY

Date	Event/Action	Page in Electronic Record
3 July 2000	The Appellant was appointed to the rank of Prison Officer I in the Trinidad and Tobago Prison Service.	398-399
September 2003	The Appellant passed the promotion examination for the rank of Prison Officer II.	498 and 1078-1079
October 2004	The Appellant began taking periods of sick leave after she suffered a back injury in a fall at the Women's Prison, Golden Grove.	499-502
27 April 2006	The Appellant was granted pregnancy related sick leave by the Port of Spain General Hospital lasting to 26 June 2006.	502
18 June 2006	The Appellant gave birth to her child, which triggered three months of maternity leave expiring on 18 September 2006.	503

19 September 2006	The Appellant attended the Port of Spain Prison to resume her duties but was informed she had not provided sufficient sick leave certificates to account for the periods of her absence from duty and was unable to resume work until she did so.	503-504
27 September 2006	The Appellant wrote to the Commissioner of Prisons stating that she wanted to resume active duties and providing details of sick leave certificates.	540-541
18 April 2008	The Public Service Commission ('the Commission') wrote to the Appellant proposing to declare her as having resigned from office as she had been absent from duty with effect from 27 April 2006.	519
10 December 2008	The Commission wrote to the Appellant confirming that it had declared her to have resigned from her office with effect from 21 June 2007.	554
30 July 2010	The Appellant filed a claim for Judicial Review of the Commission's decision of 10 December 2008 (<i>CV2010-00326 Favianna Gajadhar v The Public Service Commission</i>).	
27 June 2012	The High Court (Seepersad J) found in favour of the Appellant and granted a declaration that the procedure adopted by the Commission was in breach of the principles of natural justice.	451-484
31 January 2014	Following an appeal by the Commission, the Court of Appeal (Jamadar, Beraux, Mohammed JJA) upheld the decision of the High Court and remitted the matter to the Commission for its review (<i>Civil Appeal No. P170 of 2012 Favianna Gajadhar v The Public Service Commission</i>).	433-450
24 October 2016	The Commission sent a letter to the Appellant stating that she had failed to provide evidence/medical certificates to cover all her absences and so the Commission had decided that its decision to declare her to have resigned her office with effect from 21 June 2007 should stand.	572-573
20 January 2017	The Appellant filed an application to judicially review the Commission's decision of 24 October 2016.	

19 July 2017	Harris J granted the Appellant permission to discontinue the judicial review claim to give her an opportunity to make representations on new issues the Commission had raised.	645-646
7 September 2017	The Appellant made representations to the Commission via her Attorney.	622-638
9 November 2017	The Commission wrote to the Appellant informing her that it had reviewed her representations and had decided that its decision to declare her to have resigned her office with effect from 21 June 2007 should stand.	640
21 May 2018	The Appellant filed an application to judicially review the Commission's decision of 9 November 2017.	
12 June 2019	The High Court (Seepersad J) (<i>C.V. 2018-01818 Favianna Gajadhar v The Public Service Commission</i>) declared the Commission's decision to be illegal, irrational, unfair, null and void and of no effect.	657-658
1 April 2021	The Court of Appeal (Yorke-Soo Hon, Bereaux, Dean-Armorer JJA) dismissed an appeal by the Commission.	659-661
15 June 2021	The Appellant's Attorney sent Pre-Action Protocol letter to the Commission requesting the Appellant's reinstatement and payment of arrears in salary, allowances and/or benefits from 21 June 2007.	738-743
4 April 2022	The Commission wrote to the Appellant stating that it had decided she should be allowed to resume duty with immediate effect and that the Commissioner of Prisons had been instructed to take steps to appropriately classify the Appellant's " <i>leave of absence</i> " from 21 June 2007.	749
11 April 2022	The Appellant resumed duties as Prison Officer I.	1175
22 April 2022	The Appellant's Attorney at Law sent a Pre-Action Protocol letter to the Commission stating that the Appellant had not been on a leave of absence but had been unlawfully prevented from working. This letter requested payment of the Appellant's arrears of salary, allowances, and/or benefits from 21 June 2007.	751-755

8 June 2022	The instant claim was filed against the Respondent.	4-38
9 June 2022	The Appellant's Attorney received a letter from the Commission, dated 23 May 2022, which stated that the Commission had rescinded its decision to instruct the Commission of Prisons to take steps to appropriately classify the Appellant's " <i>leave of absence</i> ". The letter did not refer to the outstanding arrears of salary, allowances, and/or benefits.	774
26 October 2023	The High Court (Seepersad J) found for the Claimant on all grounds.	J: 147-178 O: 179-181
8 December 2023	The Respondent filed a Notice of Appeal against the High Court's judgment.	182-190
31 May 2024	The Appellant was paid \$1,572,160.68 as backdated salary, allowances and benefits.	254
25 November 2024	The Court of Appeal (Moosai, Lucky and Dean-Armorer JJA) handed down oral judgment. The Court allowed the appeal in part, finding that the High Court had erred by concluding that Appellant's rights under section 4(a) of the Constitution had been breached.	J: 378-387 O: 388-389
7 February 2025	The Appellant was granted conditional leave to appeal to the Judicial Committee of the Privy Council.	390-393
23 June 2025	The Appellant was granted final leave to appeal to the Judicial Committee of the Privy Council.	395-396