



19 December 2016

PRESS SUMMARY

Barrow (Appellant) v Attorney General of Saint Lucia (Respondent) (Saint Lucia) **[2016] UKPC 38**

On appeal from the Court of Appeal of the Eastern Caribbean Supreme Court (Saint Lucia)

JUSTICES: Lady Hale, Lord Kerr, Lord Clarke, Lord Carnwath and Lord Hughes

BACKGROUND TO THE APPEAL

The appellant was a Justice of Appeal of the Eastern Caribbean Supreme Court (the “ECSC”). He retired aged 56 after three years and five months of service. The grant of pensions to judges of ECSC is governed by a number of pieces of legislation, including:

- The Supreme Court Act 1996 prescribes the compulsory retirement age for Justices of Appeal as 65 years.
- The Pensions Act 1967 provides that minimum retirement age for entitlement to a judicial pension is 55 years.
- Regulation 2 of the Pensions Regulations, which are contained in the Schedule to the Pensions Act, defines “qualifying service” as “service which may be taken into account in determining whether an officer is eligible by length of service for pension, gratuity or other allowance”. Regulation 4 provides for every person who has been in public service for ten years or more to be granted a pension on his or her retirement.
- Section 12 of the Salaries Order 1974 provides that in computing the pension of a judge on retirement a specified number of years should be added on to his or her period of service. For a Justice of Appeal, the specified number of years is seven.
- Section 3(1) of the Rates Act 1989 sets out how to compute the pensions payable to a judge upon his “retirement in pensionable circumstances”.

The appellant made a claim for a pension to the Government of Saint Lucia [4]. The respondent, on behalf of the government, made a reference to the Court of Appeal (Lord Neuberger of Abbotsbury and Moore-Bick and Bannister JJA (Ag)) to seek clarification in respect of the applicable legislation (the “Reference”) [5]. The Court of Appeal gave an advisory opinion (the “Advisory Opinion”) that the appellant had not retired “in pensionable circumstances” for the purposes of the Rates Act, because he had not met the requirement of Regulation 4 of the Pensions Regulations of ten years of service [6]. The appellant subsequently issued a claim in the High Court seeking a declaration that he was entitled to be paid a pension in accordance with the Rates Act 1989. The High Court also found that the appellant was not entitled to a judicial pension as he had not served the requisite number of qualifying years [22]. This decision was upheld by the Court of Appeal (Baptiste JA and Thom and Kentish-Egan JJA (Ag)) [23-25]. The appellant appealed to the Board. He argued that:

- (1) he was entitled to be paid a pension as the ‘add-on years’ provided for under s.12 of the Salaries Order should be taken into account in calculating the period of “qualifying service”;
- (2) alternatively, in reliance on previous practice by the respondent of taking into account the ‘add-on years’, to enable a judge to qualify for a pension, he had a legitimate expectation to be paid a pension [26-27].

JUDGMENT

The Judicial Committee of the Privy Council will humbly advise Her Majesty that the appeal should be dismissed. Lord Clarke gives the advice of the Board.

REASONS FOR THE JUDGMENT

The two central questions as identified by the Advisory Opinion were: (1) whether “retirement in pensionable circumstances” in the Rates Act refer back to the Pensions Act and Regulations, and if not what meaning does it have [29]; and (2) whether section 12 of the Salaries Order is concerned with computing the amount of the pension payable to a judge or whether it is also relevant to the calculation of the period of service that will qualify a judge for a pension [28].

In respect of the first question, the Board agrees with the Advisory Opinion, that in absence of any definition in the Rates Act of “in pensionable circumstances” its meaning must be determined by reference to the legislative and other context existing at the time the Rates Act was passed; that is, by reference to the requirements of the Pensions Act and Regulations. A judge must therefore have attained the age of 55 years and been in public service (although not exclusively as a judge) for at least ten years in order to retire “in pensionable circumstances” [33].

In respect of the second question, the Board also agrees with the Advisory Opinion that s.12 of the Salaries Order relates only to the computation of the amount of pension payable and does not have any bearing on the period of service necessary to qualify for a pension. This is clear from the natural meaning of the words “in computing the pension of a judge” and in light of the Pensions Act and Regulations [40-41].

The Board rejects the appellant’s argument that the respondent concealed from the panel in the Reference information that showed in practice judges had been granted pensions without serving a qualifying period of ten years. The material could have been put before the panel by the appellant. In any event, much of the material the appellant submits would lead to a different opinion was in fact before the panel, however, the panel correctly decided that such extra-statutory material was not admissible when construing the relevant legislation. In addition, there is no basis upon which the appellant can challenge the decisions of the High Court and Court of Appeal on these grounds [48-51].

The Board does not consider that the appellant had a legitimate expectation that he would receive a pension based on previous practice. Whilst there had been some previous practice of applying the ‘add-on years’ in the Salaries Order to judges’ years of public service in order to provide them with the necessary number of qualifying years, this had only occurred in respect of judges who had attained the mandatory retirement age of 65 [54-57].

NOTE

This summary is provided to assist in understanding the Committee’s decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: www.jcpc.uk/decided-cases/index.html.