

Michaelmas Term
[2026] UKPC 35
Privy Council Appeal No 0085 of 2025

JUDGMENT

Attorney General of Trinidad and Tobago (Respondent) *v* Favianna Gajadhar (Appellant) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Sales
Lord Lloyd-Jones
Lord Leggatt
Lady Simler
Lord Snowden

JUDGMENT GIVEN ON
12 October 2026

Heard on 12 October 2026

Appellant
Anand Ramlogan SC
Jodie Blackstock
Katie Lines
(Instructed by Freedom Law Chambers)

Respondent
Robert Strang
(Instructed by Charles Russell Speechlys LLP)

LORD LEGGATT:

1. The question on this appeal is whether the Court of Appeal was justified in setting aside a declaration by the High Court that the right of the claimant and appellant, Ms Gajadhar, to enjoyment of property and not to be deprived of property except by due process of the law, in accordance with section 4(a) of the Constitution of Trinidad and Tobago, had been violated.

2. The history of this case is a sorry one which, regrettably, does no credit to the Public Service Commission of Trinidad and Tobago. In short, Ms Gajadhar, who is a prison officer, was prevented from carrying out her duties for a period of nearly 15 years and had salary and other emoluments withheld for nearly 17 years.

3. Ms Gajadhar joined the Prison Service in 2000. From October 2004, she took several periods of sick leave after she suffered a back injury in a fall at work. On 27 April 2006, she was granted pregnancy-related sick leave lasting to 26 June 2006. On 18 June 2006, she gave birth to a child which triggered three months of maternity leave expiring on 18 September 2006.

4. On 19 September 2006, Ms Gajadhar attended the Port of Spain Prison to resume her duties but was informed that she had not provided sufficient sick leave certificates to account for periods of her absence from duty and could not return to work until she did so. She provided sick leave certificates but, in April 2008, the Public Service Commission wrote to her indicating that it proposed to treat her as having resigned from office as she had been absent from duty with effect from 27 April 2006 (the day when her pregnancy-related sick leave was granted). The Commission subsequently wrote in December 2008 to say that it had declared her to have resigned from her office with effect from a later date of 21 June 2007.

5. Ms Gajadhar brought proceedings for judicial review of that decision. Those proceedings resulted in a judgment of the High Court in June 2012 which found in her favour and granted a declaration that the Commission had failed to follow a proper process and that its decision was in breach of the principles of natural justice.

6. The Commission appealed but, in January 2014, its appeal to the Court of Appeal was dismissed and the matter remitted to the Commission to review its decision. Following such a review, the Commission decided to adhere to its decision to declare Ms Gajadhar to have resigned her office with effect from 21 June 2007.

7. It is unnecessary to recount all the subsequent chronology of proceedings. But in May 2018 another claim for judicial review was brought after the Commission had, by a

letter dated 9 November 2017, yet again affirmed its decision to treat Ms Gajadhar as having resigned from office in June 2007. The letter contained no reasons for this decision but in the judicial review proceedings the Commission sought to justify it on the basis that Ms Gajadhar had failed to apply for maternity leave in accordance with the Maternity Protection Act (Act 4 of 1998). That was an entirely new justification which had never been heralded during the previous decade. The High Court, in a judgment given in June 2019, at para 59, found that reliance on that ground was "simply untenable and grossly unfair". The court granted a declaration that the Commission's decision was "illegal, irrational, unfair, null, void, and of no effect". The Commission was ordered to reconsider its decision once more.

8. Once again, the Commission chose to appeal and, in April 2021, its appeal was dismissed by the Court of Appeal.

9. Another year went by before the Commission complied with the order to reconsider its decision. When it did so, in April 2022, the Commission this time decided that Ms Gajadhar should be allowed to resume duty with immediate effect. However, it also instructed the Commissioner of Prisons to take steps to appropriately classify what was described as Ms Gajadhar's "leave of absence", implying that the period since 21 June 2007 should be treated, not as a period of paid employment, but as a period of unpaid leave of absence.

10. The Commission, on legal advice, subsequently reconsidered that point and accepted that the claimant was entitled, following her reinstatement, to arrears of salary, allowances and other benefits from 21 June 2007.

11. By this time, the present claim for judicial review, from which this appeal has arisen, had been commenced seeking declarations that Ms Gajadhar's rights under section 4(a) and (b) of the Constitution of Trinidad and Tobago had been violated and also claiming damages. The claim was heard by the High Court in October 2023. The judge (Mr Justice Seepersad) found for the claimant, Ms Gajadhar, on all grounds. He found that arrears of pay had been admitted by the Commission but had not been paid. He further found breaches of her constitutional rights under both section 4(a) (the right to enjoyment of property) and section 4(b) (the right to the protection of the law). On the Board's reading of the judgment, the findings of breach cover in both cases the whole period from June 2007 up to the date of the judgment. In respect of those breaches, the judge awarded compensatory damages, including damages for distress and inconvenience, and also vindicatory damages for breach of the claimant's constitutional rights in a sum of $350,000. Ms Gajadhar was finally paid her backdated salary some seven months later in May 2024.

12. The State, represented by the Attorney General, appealed to the Court of Appeal against the declaration that there had been a breach of the right under section 4(a) and against the awards of compensatory and vindicatory damages. For reasons given orally at the hearing of the appeal on 25 November 2024, the Court of Appeal dismissed the appeal against the awards of damages, but allowed the appeal against the declaration that there had been a breach of section 4(a) and set aside that declaration. In consequence, the Court of Appeal awarded Ms Gajadhar only 50% of her costs of the appeal. From that decision, she now brings this appeal as of right to the Judicial Committee of the Privy Council.

13. It is common ground on this appeal that salary constitutes property for the purpose of section 4(a). The Court of Appeal took the view that, as they put it, "the entitlement of Ms Gajadhar was clarified in the Court of Appeal in April 2021" and that this was the time from which the delay ought properly to be computed. They went on to say that, although there were undeniable failings in the process by which the arrears were computed, they did not find that there was "any culpable delay nor was the length of the delay so egregious as to found a breach under section 4(a) for the purpose of section 14 of the Constitution".

14. On this appeal, Mr Strang, representing the Attorney General, has vigorously defended the Court of Appeal's decision and advanced arguments justifying their view that the delay since April 2021, although regrettable, was delay which the Court of Appeal was justified in finding did not amount to a breach of the section 4(a) right.

15. The Board does not find it necessary to decide whether those arguments should be accepted. That is because the Board is satisfied that the decision of the Court of Appeal was made on an erroneous premise and that the Court of Appeal was wrong to take the view that delay ought properly to be computed only from April 2021.

16. The Attorney General accepts (and accepted in the courts below) that when a decision to terminate a public officer's service is found by the courts to have been unlawful, the normal (though not inevitable) result is that the public officer is held to have remained in office, entitled to the remuneration attaching to such office, so long as she remained ready, willing and able to render the service required. Of the many authorities that might be cited in support of that uncontroversial proposition, Mr Strang referred to the case of *McLaughlin v Governor of the Cayman Islands* [2007] UKPC 50; [2007] 1 WLR 2839, para 14 and following. He also accepted that the normal result followed from the decisions of the courts in this case.

17. In argument today, however, Mr Strang sought to draw a distinction between the right to remain in office and the right to salary attaching to that office. He submitted that although—as he accepted—the effect of the court decisions declaring the decision to treat the claimant as having resigned null and void was that she is to be treated as having

remained in office throughout the period from June 2007, nevertheless she was not entitled to salary during that period. He submitted that there was no lawful basis on which the prison authority could have paid her salary so long as the Public Service Commission was taking the position—as it was in good faith—that she had resigned her office.

18. The Board does not regard this as a tenable distinction. It must, in the Board's view, follow from the acceptance that the claimant is to be treated as having remained in office from June 2007 that she was entitled to be paid salary, as a corollary of being in office, throughout that same period.

19. The inexorable conclusion, the Board considers, is that the deprivation of property began in June 2007 because that is when the State began to withhold salary to which—as has now been definitively established—Ms Gajadhar was entitled and continued to be entitled until the arrears were eventually paid in May 2024. The question then becomes whether that deprivation of property was effected by due process of law.

20. In *Lasalle v Attorney General* (1971) 18 WIR 379 at 412 - in a passage quoted with approval by the Board in *Seepersad v Commissioner of Prisons of Trinidad and Tobago* [2021] UKPC 13; [2021] 1 WLR 4315, para 34 - Fraser JA said succinctly that the stipulation for due process of law in the deprivation of rights in section 4(a) is "intended basically to insure the individual against oppressive or arbitrary use of authority". See also *Jaroo v Attorney General of Trinidad and Tobago* [2002] UKPC 5; [2002] 1 AC 871, para 28. The question, therefore, is whether the deprivation during this period was arbitrary.

21. The Board accepts that the fact that the State has been held to have acted unlawfully does not by itself necessarily show that there has been an arbitrary exercise of power which amounts to a lack of due process. It is necessary to consider the particular circumstances and whether there was, for example, a bona fide dispute in which it cannot be said that either party was acting unreasonably until the legal position had ultimately been clarified by the court. But equally, the Board is satisfied that the present case is very far from being such a situation. As the High Court judge, Mr Justice Seepersad, said in his judgment below, at para 37:

> "The Commission's decision to deem that the claimant had resigned amounted to the infliction of a penalty which was imposed upon her in the absence of any disciplinary hearing and the position initially adopted by the Service Commission to treat her as having resigned and its subsequent steadfast adherence to the said position cannot be disregarded. The principle of natural justice was not honoured and there was a

> fundamentally unfair exercise of power contrary to section 129(4) of the Constitution."

22. In the Board's view, that conclusion is unassailable.

23. The period of delay prior to April 2021 falls into two parts. During the first period, up to the initial High Court decision in 2012 and the dismissal of the Commission's appeal from that decision in 2014, it is manifest that the claimant's salary was being withheld without due process as the High Court and Court of Appeal determined that no proper or fair procedure or disciplinary process had been followed by the Commission before it took the decision to treat her as having resigned her office.

24. The second period culminated in the judgment of the High Court in 2019, upheld by the Court of Appeal in April 2021. In that judgment, as already mentioned, the court found the Commission's attempt to justify the original decision to treat the claimant as having resigned retrospectively on an entirely new basis as not only illegal and irrational but as grossly unfair.

25. It is, in the Board's view, plain that, looking at the period of delay as a whole, the withholding of salary throughout the period of 16 years from 2007 to the time of the current High Court decision was not only unlawful, null and void, but also amounts to an arbitrary and oppressive exercise of state power. Indeed, Mr Strang, with characteristic and commendable realism, did not seek to argue that, if the Board concludes—as it has—that time began to run in 2007, the Court of Appeal's decision can be supported.

26. The result is that the basis on which the Court of Appeal set aside the declaration of a breach of section 4(a) was erroneous. It follows that the declaration must be reinstated and this appeal allowed.