



Trinity Term

[2018] UKPC 22

Privy Council Appeal No 0018 of 2017

JUDGMENT

Harding (Appellant) v Attorney General of Anguilla (Respondent) (Anguilla)

From the Court of Appeal of the Eastern Caribbean Supreme Court (Anguilla)

before

Lord Reed

Lord Kerr

Lord Sumption

Lord Hodge

Lord Briggs

JUDGMENT GIVEN ON

30 July 2018

Heard on 9 July 2018

Appellant

Horace R Fraser

(Instructed by Simons Muirhead & Burton
LLP)

Respondent

John McKendrick QC

Attorney General, Anguilla

(Instructed by Attorney General's
Chambers)

LORD SUMPTION:

1.

In these proceedings, Mrs Harding claims that she was removed from office before the expiry of her final term in breach of the Constitution of Anguilla, and that she had a legitimate expectation of reappointment which was violated by the failure to reappoint her. Her claim was rejected in the High Court and again in the Eastern Caribbean Court of Appeal for reasons which appear to the Board to be entirely correct. They will therefore content themselves with indicating briefly the points which were argued and the reasons why they have now failed at every stage.

2.

The Constitution of Anguilla provides:

“Power to appoint, etc, to judicial offices

68(1) Power to make appointments to the offices to which this section applies and to remove and exercise disciplinary control over persons holding or acting in such offices shall vest in the Governor, acting after consultation with the Judicial Service Commission.

(2) This section applies to the office of Magistrate, to any office in the public service of any registrar or other officer of the High Court who is required to possess legal qualifications and to such other offices in the public service, for appointment to which persons are required to possess legal qualifications, as may be prescribed by any law for the time being in force in Anguilla.”

3.

Mrs Harding was the first holder of the office of Registrar of the High Court of Anguilla. She was originally appointed for a term of two years with effect from 10 January 1999. On the expiry of that term she was reappointed for six further consecutive terms, the last one expiring on 10 January 2012. The terms of her appointment were set out on each occasion in a written contract. Three clauses of the final contract, dated 21 January 2010, are relevant. The first, clause 1, provided that her appointment was limited to two years, from 11 January 2010. The second was clause 7, which entitled the Governor to terminate her appointment at any time without cause on three months’ notice after consulting the Judicial Service Commission. The third was clause 11, which provided that six months before the end of the term her appointment would be advertised, and that if she wished to be considered she must submit a curriculum vitae, which would be submitted to the Governor along with the curriculum vitae of any other suitably qualified applicant.

4.

The first point to be made is that Mrs Harding was not removed from office. Her contract expired by effluxion of time on 10 January 2012. The letter of 14 December 2011 from the Department of Public Administration, which informed her that she would not be reappointed, said that her term of office would accordingly end on 10 January 2012. It also directed her to take 14 days of her unclaimed vacation entitlement from 16 December 2011 to 10 January 2012. The sole basis on which she claims to have been dismissed before 10 January 2012 is (i) that the same letter proposed that she should be paid three months’ salary in lieu of notice under clause 7(1); and (ii) that she was directed to surrender her office keys before the start of her vacation, and access to her work computer files was blocked while she was away. Since she had not been dismissed on three months’ notice under clause 7(1) the reference to that clause was a mistake. She had not, however, been informed of the Governor’s decision not to reappoint her three months before the termination of her contract, as required under clause 11(2), and the judge held that the three months’ salary paid to her was adequate compensation for that failure. That could not amount to a summary dismissal. As to the keys and the computer files, the steps taken by her employer assumed that she would be on vacation for the remainder of her term of office. It was manifestly not a repudiation of what remained of her contract or a premature dismissal.

5.

In those circumstances, Mrs Harding’s only possible complaint was that she should have been reappointed. Contractually, she had no right to be reappointed. Her appointment was for a limited term and provided that six months before the expiry of that term her job would be advertised. She does not claim that the constitution gives her security of tenure. That would have been an impossible contention given the absence of any express right to tenure in the Constitution and the well established principle that the holder of a lower judicial office may properly be employed on a fixed

term contract: see *Hinds v The Queen* [1977] AC 195, 218 (Lord Diplock). Instead, it was submitted on Mrs Harding's behalf that as the incumbent office-holder she had a substantive legitimate expectation of reappointment. The difficulty about this submission, and it is an insuperable one, is that the practice of opening appointments to competition at the expiry of their terms had been formally adopted and announced by the Department of Public Administration in 2004 and notified by letter to Mrs Harding. Subsequent contracts had been on terms similar to clause 11 of her latest contract of 2010. Indeed, on 8 July 2011 she had written asking to be "considered for a further period of employment", expressly invoking that clause. A legitimate expectation is not the same as an unqualified right. It is a factual situation in which a public authority has caused a person to believe on reasonable grounds that he or she would enjoy some advantage. If, which the Board doubts, Mrs Harding had ever had a legitimate expectation of reappointment, it could not have survived the notification to her in 2004 of the administration's intention to open public appointments to competition at the expiry of their existing terms, or her consent to the terms of successive contracts drawn on that basis thereafter.

6.

Mr Fraser, who appeared for Mrs Harding, rather tentatively proposed that his client had a relevant procedural legitimate expectation, but had some difficulty in explaining what that expectation was. In principle, it would have to be an expectation as to the procedure by which the appointment process would be conducted as the expiry of her term approached. However, the only aspect of the procedure which he could point to as conflicting with her expectation was the requirement that she should attend for interview. She refused to do that because she considered that she was entitled as of right to be reappointed. If she had been entitled to reappointment as of right, she would no doubt have been justified in refusing to be interviewed for the job. But if not, she could properly be required to submit to any requirement which it was reasonable to impose on candidates generally, including an interview. It therefore follows from the Board's conclusion that she had no substantive legitimate expectation of reappointment, that she had no relevant procedural legitimate expectation either.

7.

Finally, it was argued that the order of the Court of Appeal should be set aside because of the inordinate delay (two years) between the argument of the appeal and the delivery of judgment. The Board agrees that the delay was inordinate. The appeal involved no disputed facts or difficult points of law. The Board is not aware of the reasons for the delay but finds it difficult to envisage what reasons could possibly justify a delay of that order. However, save possibly in cases where the delay appears to have affected the Court of Appeal's command of the issues, it cannot be a ground for setting aside the Court of Appeal's order, least of all when the effect of that order was to affirm the correct decision of trial judge.

8.

In these circumstances, the Board will humbly advise Her Majesty that this appeal should be dismissed. The parties should make any submissions on costs in writing within two weeks.