

O N A P P E A L

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL

B E T W E E N

KEMRAJH HARRIKSSOON

Appellant

- and -

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

CASE FOR THE RESPONDENT

RECORD

- This is an appeal from a Judgment of the Court of Appeal of Trinidad and Tobago (Sir Isaac Hyatali, C.J., Phillips and Rees JJ. A.) dated the 29th March, 1977, which dismissed the Appellant's appeal from a Judgment of Cross, J. dated the 30th June, 1975 in the High Court of Justice in Trinidad and Tobago dismissing the Appellant's Motion dated the 6th May, 1975 wherein the Appellant claimed, inter alia, that the ^{and/or order} decision of the Teaching Service Commission communicated to the Appellant by letters dated the 25th January and the 20th March, 1975, were unconstitutional, illegal, void and of no effect and that the Appellant was entitled to relief pursuant to the provisions of section 6 of the Constitution of Trinidad and Tobago.

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2. The principal questions arising in this appeal are:-
- (a) Whether the transfer complained of by the Appellant amounted to the performance of a function vested in the Teaching Service Commission within section 102 (4) of the Constitution and, if so, whether that sub-section effectively excluded the jurisdiction of the Courts to enquire into the matter;
 - (b) Whether the Public Service Commission Regulations 1966 apply in this case and if so, whether the Appellant can be heard to complain that those regulations have not been complied with;
 - (c) Whether the Court of Appeal was right in holding that the Appellant's affidavit did not justify a conclusion that the transfer complained of was made in consequence of reports of misconduct made by the principal of Penal Government Primary School.

3. The relevant statutory provisions, regulations and provisions of the Constitution are as follows:-

- (A) The Constitution of Trinidad and Tobago.

CHAPTER I

THE RECOGNITION AND PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

1. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour,

religion or sex, the following human rights and fundamental freedoms, namely,

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law.

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6. (1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of the foregoing sections or section 7 of this Constitution has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction -

(a) to hear and determine any application made by any person in pursuance of subsection (1) of this section;

and

(b) to determine any question arising in the case of any person which is referred to it in pursuance of subsection (3) thereof,

and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of the said foregoing sections or section 7 to the protection of which the person concerned is entitled.

- (3) If in any proceedings in any court other than the High Court or the Court of Appeal any question arises as to the contravention of any of the provisions of the said foregoing sections or section 7 the person presiding in that court may, and shall if any party to the proceedings so requests, refer the question to the High Court unless in his opinion the raising of the question is merely frivolous or vexatious.
- (4) Any person aggrieved by any determination of the High Court under this section may appeal therefrom to the Court of Appeal.
- (5) Nothing in this section shall limit the power of Parliament to confer on the High Court or the Court of Appeal such powers as Parliament may think fit in relation to the exercise by the High Court or the

Court of Appeal, as the case may be, of its jurisdiction in respect of the matters arising under this Chapter.

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CHAPTER VIII

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THE PUBLIC SERVICE

THE PUBLIC SERVICE COMMISSION

Public Service Commission

92. (1) There shall be a Public Service Commission for Trinidad and Tobago which shall consist of a Chairman, a Deputy Chairman and not less than two or more than four other members.

(2) The members of the Public Service Commission shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister.

(3) A person shall not be qualified to be appointed to or to hold the office of a member of the Public Service Commission if he is a Senator or a temporary member of the Senate or a member of the House of Representatives or a Minister or a Parliamentary Secretary or if he holds or is acting in or has held any public office within the period of three years immediately preceding such appointment.

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93. (1) Subject to the provisions of this Constitution, power to appoint persons to hold or act in public offices (including power to make

Appointments & c. of public officers

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:

Provided that the Commission may, with the approval of the Prime Minister and subject to such conditions as it may think fit, delegate any of its powers under this section, by directions in writing, to any of its members or to any public officer.

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CHAPTER IX

MISCELLANEOUS

102. (1) Subject to the provisions of subsection (3) of this section, a Commission to which this section applies may, with the consent of the Prime Minister, by regulation or otherwise regulate its own procedure, including the procedure for the consultation with persons with whom it is required by this Constitution to consult, and confer powers and impose duties on any public officer or on any authority of the Government of Trinidad and Tobago for the purpose of the discharge of its functions.

Powers and procedure of Service Commission and protection from legal proceedings.

- (2) Without prejudice to the generality of the powers conferred by subsection (1) of this

section, a Commission to which this section applies may by regulation make provision for the review of its findings in disciplinary cases.

- (3) At any meeting of a Commission to which this section applies a quorum shall be constituted if three members are present, and, if a quorum is present, the Commission shall not be disqualified for the transaction of business by reason of any vacancy among its members, and any proceeding of the Commission shall be valid notwithstanding that some person who was not entitled so to do took part therein.
- (4) The question whether -
- (a) a Commission to which this section ^{applies} has validly performed any function vested in it by or under this Constitution;
 - (b) any member of such a Commission or any other person has validly performed any function delegated to such member or person in pursuance of the provisions of subsection (1) of section 84, or subsection (1) of section 93, or subsection (1) of section 99, as the case may be, of this Constitution; or
 - (c) any member of such a Commission or any other person has validly performed any other function in relation to the work of

the Commission or in relation to any such function as is referred to in the preceding paragraph;

shall not be enquired into in any court.

- (5) References in this section to a Commission to which this section applies are references to the Judicial and Legal Service Commission, the Public Service Commission or the Police Service Commission, as the case may be, established under this Constitution.

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(B) The Education Act 1966 (Act No.1 of 1966)

53. (1) For the purposes of the schools system established by section 12, there is hereby established a unified Teaching Service

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(3) Subject to the provisions of the Constitution and of any enactment, the Public Service Commission shall have power to appoint persons to be or act as members of the Teaching Service and to transfer, promote, remove and exercise disciplinary control over persons who are acting as such.

* * * * *

(C) The Public Service Commission Regulations, 1966.

MADE BY THE PUBLIC SERVICE COMMISSION, WITH THE
CONSENT OF THE PRIME MINISTER, UNDER THE PROVISIONS
OF SECTION 102 OF THE CONSTITUTION OF TRINIDAD AND
TOBAGO

CHAPTER I

PRELIMINARY

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| 1. | These Regulations may be cited as the Public Service Commission Regulations 1966. | Short title and commencement |
| 2. | In these Regulations, unless the context otherwise requires - | Interpretation |
| | (a) "acting appointment" means the temporary appointment of an officer whether on promotion or otherwise to a higher office whether that office is vacant or not; | |
| | (b) "appointment" means the placing of a person in an office in the public service; | |
| | (c) "the Chairman" means the Chairman of the Commission; | |
| | (d) "Civil Service" means the Civil Service Established by the Civil Service Act, 1965; | |
| | (e) "the Commission" means the <u>Public Service Commission constituted under section 92 of the Constitution</u> ; | |
| | (f) "the Constitution" means the Constitution of Trinidad and Tobago; | |
| | (g) "Director" means the Director of Personnel Administration; | |

ignore underlining]

- (h) "Fire Service" means the Fire Service established by the Fire Service Act, 1965;
- (i) "Gazette" means the Gazette published by the order of the Government and includes supplements thereto and any Extraordinary Gazette so published;
- (j) "Head of Department" means the officer charged with the administration of a Department not under the control of a Minister;
- (k) "officer" means a person employed in that part of the public service established respectively as the Civil Service, the Fire Service, the Prison Service, or any other service in the public service who is subject to the jurisdiction of the Commission and, for the purposes of section 53 of the Education Act, 1966, shall be deemed to include all persons employed in the Teaching Service;
- (l) "Permanent Secretary" includes the Legal Secretary to the Attorney General;
- (m) "prescribed form" means the appropriate form as may from time to time be prescribed by the Commission;
- (n) "Prison Service" means the Prison Service established by the Prison Service Act, 1965;

- (o) "promotion" means the appointment of an officer to an office in a grade carrying a higher remuneration whether such office be in the same Ministry or Department or not;
- (p) "public office" includes a public office in the Civil Service, the Fire Service, the Prison Service and for the purposes of section 53 of the Education Act, 1966, shall be deemed to include an office in the Teaching Service;
- (q) "public service" includes the Civil Service, the Fire Service, the Prison Service and for the purposes of section 53 of the Education Act, 1966, shall be deemed to include the Teaching Service;
- (r) "secondment" means the transfer of an officer in a particular service to serve for a period in an office in another service or in an office in the public service or in an office under another Government or under a Statutory Board or organisation approved by the Governor-General.
- (s) "Teaching Service" means the unified Teaching Service established under section 53 of the Education Act, 1966.

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CHAPTER XI

THE TEACHING SERVICE

PART I

PRELIMINARY

125. In this Chapter -

Defini-
tions

"Act" means the Education Act, 1966;

"assisted school" means a public school, the Board of Management of which has received or is in receipt of public funds for building or extension or re-building or for the equipment and facilities provided for the school;

"Board" means the governing body of an assisted school established under section 15 of the Act;

"Government school" means a public school wholly owned by the Government.

"public school" means a Government school or an assisted school;

"primary school" means a school for the provision of primary education within the meaning of section 6 of the Act;

"teacher" means a person registered as such under the former Education Ordinance or under the Act and the Regulations who is a member of the Teaching Service;

"Teaching Service" means the unified Teaching Service established under section 53 of the Act.

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TRANSFERS (General)

Application
for transfer

134. Every application for an appointment on transfer in the Teaching Service shall be addressed to the Director through the Permanent Secretary on the prescribed form and, in the case of an application from a teacher in an assisted school, through the Board to the Permanent Secretary.
135. (1) Where the Commission proposes to transfer a teacher other than as a result of a request by a Board under regulation 137 the Commission shall, except where the exigencies of the Teaching Service do not permit, make an order of transfer in writing and shall give not less than three months' notice to the teacher who is to be transferred.
- (2) Where a teacher has applied for a transfer to a particular public school and the Commission proposes to transfer the teacher, but not to the particular school, the Commission shall, except where the exigencies of the Teaching Service do not permit, make an order of transfer in writing and shall give not less than three months' notice to such teacher.
- (3) A teacher who is aggrieved by an order made under paragraph (1) or (2) may make representation to the Commission for a review of the order in accordance with paragraph (4).

(4) Where a teacher desires to make representation to the Commission for a review of an order made under paragraph (1) or paragraph (2), such teacher, within fourteen days of the receipt of the order, shall give notice in writing to the Permanent Secretary or, in the case of an assisted school, to the Board, to be forwarded to the Permanent Secretary, and shall submit with the notice his representations in writing.

(5) The Permanent Secretary shall, within seven days of the receipt of any representation made to him in writing under paragraph (4) forward such representation together with his comments or the comments of the Board thereon to the Commission.

(6) The Commission shall consider the representations of the teacher and the Permanent Secretary or the Board, as the case may be, submitted to it under paragraphs (4) and (5) and shall record its decision in writing.

136. Notwithstanding that a teacher in respect of whom an order has been made under paragraph (1) or (2) of regulation 29 has made representation under paragraphs (5) and (6) of the said regulation the teacher shall assume his duties on transfer pending the review of the order by the Commission.

Officer
to assume
duties
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(D) The Trinidad and Tobago (Constitution) Amendment Act, 1968 (Act No. 25 of 1968).

(After section 99 of the 1962 Constitution two relevant sections are inserted as follows:-)

"Teaching
Service
Commission"

99A (1) There shall be a Teaching Service Commission for Trinidad and Tobago which shall consist of a Chairman and not more than four other members.

(2) The members of the Teaching Service Commission shall be appointed by the Governor-General acting in accordance with the advice of the Prime Minister.

(3) A person shall not be qualified to be appointed to or to hold the office of a member of the Teaching Service Commission if he is a Senator or a temporary member of the Senate or a member of the House of Representatives or a Minister or a Parliamentary Secretary or if he holds or is acting in or has held any public office within the period of three years immediately preceding such appointment.

(4) A person who has held office or acted as a member of the Teaching Service Commission shall not, within a period of three years commencing with the date on which he last so held office or acted, be eligible for appointment to any public office.

99C. (1) Subject to the provisions of this Constitution, power to appoint persons to hold or act in public offices in the Teaching Service (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 Teaching Service Commission:

Provided that the Commission may, with the approval of the Prime Minister and subject to such conditions as it may think fit, delegate any of its powers under this section, by directions in writing, to any of its members or to any public officer.

(2) Before the Teaching Service Commission appoints to an office in the Teaching Service any person holding or acting in any office, power to make appointments to which is vested by this Constitution in the Judicial and Legal Service Commission, the Public Service Commission or the Police Service Commission, it shall consult the Judicial and Legal Service Commission, the Public Service Commission or the Police Service Commission as the case may be.

(3) Every person who immediately before the coming into operation of this section holds or is acting in an office in the Teaching Service shall, as from the coming into operation of this section, continue to hold and act in the like office as if he had been appointed there- to in accordance with the provisions of this section; but any person who under any law or by agreement would have been required to vacate his office at the expiration of any period shall vacate his office at the expiration of that period."

(The words "the Teaching Service Commission" are inserted immediately after the words "Public Service Commission" in line three of section 102 (5) of the 1962 Constitution).

- 3A. The proceedings before Cross, J. in the High Court of Justice in Trinidad and Tobago were instituted by Notice of Motion dated the 6th May, 1975 which was supported by an affidavit sworn by the Appellant on the same day. pp. 1-2
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4. The Appellant's said affidavit states that the Appellant was appointed temporarily by the Teaching Service Commission on the 9th October, 1972 as Teacher I at a public school, Penal Government Primary School, wholly owned by the Government. It states that such appoint- p. 3
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ment and the holding thereof is and was at all material times regulated by the Public Service Commission Regulations, 1966 made under the provisions of Section 102 of the Constitution. The Appellant then states that his employment at the said school continued until he received a letter dated the 28th January, 1975 which purported to transfer him to Palo Seco Government Primary School without his consent. The letter is then set out in full. The Appellant states that his Solicitor replied on the 26th February, 1975. The letter is then set out in full. The Appellant then, without a reply being received to his solicitor's letter, received a further letter from the Teaching Service Commission dated the 27th March, 1975, stating that the Appellant was thereby transferred to the Palo Seco Government Primary School in the exigencies of the Services. The letter is set out in full. ~~The~~ The Appellant then stated that he was advised that the purported transfer and the decision and order giving effect to it were made in violation of the Public Service Commission Regulations and in particular regulation 135 thereof and in violation of the provisions of the Constitution and in particular section 1 thereof. The Appellant complained of inequality of treatment and violation of his right to the protection of the law.

5. The Appellant stated that the purported transfer was a punishment intended by the Teaching Service Commission as a result of unspecified allegations of misconduct

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allegedly made against him by one John Rampersad, the Principal of the Penal Government Primary School. The Appellant stated that the said allegations were unfounded and were allegedly made after complaints had been made by the Appellant to the Permanent Secretary, Ministry of Education and Culture by letter dated the 10th July, 1973, concerning, inter alia, a breakdown of discipline.

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6. The Appellant further stated that there were no exigencies of the service which warranted the purported transfer and no such exigencies were disclosed to him by the Teaching Service Commission. p.6
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7. The Appellant explained that the effect of the transfer would have been to increase his travelling expenses and cause him much inconvenience. p.7
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7. The Appellant explained that the effect of the transfer would have been to increase his travelling expenses and cause him much inconvenience. p.7 11.4
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8. The Appellant stated that he was at no time heard or given an opportunity to be heard in connection with the transfer and that it was made in breach of the rules of natural justice. p.7
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9. The Appellant's Motion came on for hearing in the High Court of Justice (Cross, J.) after an adjournment on the 23rd June, 1975. The Respondent took a preliminary objection that by reason of section 102 (4) of the Constitution the Court could not enquire into the validity of the transfer complained of as it amounted to the performance of a function of the Teaching Service *Commission* p.8

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- within that section. Cross, J. heard argument on the 23rd and 24th June, 1975 and adjourned to the 30th June, to give his ruling. pp.8
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10. In his Judgment dated the 30th June, 1975, Cross, J. pp.11 -
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summarised the essential facts and the form of relief p.11
claimed by the Appellant. The learned Judge said that 11.27 -
end
the Respondent had taken the preliminary objection p.12
that the Court had no jurisdiction to enquire into the 11. 1-3
matter. The learned Judge then set out the provisions p.12
of section 6 (1) and (2) (a) of the Constitution and 11.3 -
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said that prima facie those provisions appeared to p.12
confer jurisdiction on the High Court but said that 11.21 -
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regard had to be given to other provisions of the
Constitution. He then referred to sections 99A and p.12
99C of the Constitution as amended by Act.No.25 of 1968 11.25 -
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and set out the provisions of section 99C. In his view,
the power to transfer the Appellant from one school to p.12
another was undoubtedly one of the functions vested in 11.37 -
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the Teaching Service Commission by the Constitution.
The learned Judge then referred to section 102 (4) (a) p.12
of the Constitution as providing that the question 1.40 -
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whether a Commission to which the section applied 1.3
(which included the Teaching Service Commission by
virtue of section 102 (5)) had validly performed any
function vested in it by or under the Constitution
"shall not be enquired into by (sic) any Court". After
referring to Smith v. East Elloe R.D.C. (1956) A.C. 736, p.13
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the learned trial judge made three findings. Firstly, p.13
he found that in transferring the Appellant the 1.34
Teaching Service Commission was performing a purely - p.14
administrative function. Secondly, he found that the p.13
Appellant held an office of ~~emp~~^uolment in the public 11.34 -
service and agreed with de Smith in his book Judicial 37
Review of Administrative Action (2nd Edition) at p.162 p.13
that in English Law no legally enforceable requirements 1.38 -
(at Common Law) have to be observed by the Crown in p.14
relation to appointments to, promotions or transfers 1.7
within or dismissals from the Civil Service. Thirdly,
the learned trial Judge stated that the Appellant's p.14
complaint that the rules of natural justice had not 11.8
been observed was based on the provisions of regulation - 20
135 of the Public Service Commission Regulations, 1966.
The learned trial Judge did not agree that the transfer p.14
was made without jurisdiction because the Appellant was 11.21
not given three months' notice. He held that the power -25
to transfer was conferred by the Constitution and not p.14
by the regulations and that the regulations neither 11.25 -
limited that power nor conferred any rights on the 29
Appellant. The learned trial then referred to the fact
that the letter dated the 20th March, 1975, cited the p.14
exigencies of the service as the reason for the trans- 11.29 -
fer. The learned trial Judge then referred to regula- 31
tion 135 (3) and (4) concerning persons aggrieved making p.14
representations for a review and said that the Appellant 1.32 -
had made no such representations. The learned trial p.15
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Judge concluded by holding that the Appellant's Motion raised the question whether the Teaching Service Commission had validly performed a function vested in it by the Constitution and by finding that the Respondent's preliminary objection was well founded.

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The learned trial Judge found that the Court had no jurisdiction to hear the Motion which he accordingly dismissed with costs to be taxed.

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11. The Appellant appealed to the Court of Appeal of Trinidad and Tobago. The appeal was heard by Sir Isaac Hyatali, C.J., Phillips and Rees, JJ.A. and judgment was given on the 29th March 1977 unanimously dismissing the Appellant's appeal.

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12. Sir Isaac Hyatali, C.J. in his Judgment with which Phillips, J. agreed, said that the Teaching Service Commission was established with effect from the 26th

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September, 1968 and included as one of the Commissions to which section 102 of the 1962 Constitution applied.

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The learned Chief Justice said that one of the main issues concerned the interpretation of section 102 (4) (a) of the Constitution which ousted the jurisdiction of the Court to enquire into the question

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whether the Commission had validly performed any function vested in it by or under the Constitution. The learned Chief Justice said that he agreed with the judgment of Rees, J.A.. The learned Chief Justice then summarised the facts and history of the proceedings.

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The learned Chief Justice said that Counsel for the Appellant had repeated the submission made before Cross, J. that the order transferring him to another school was a nullity and that he was entitled in law to a hearing on the merits since, so Counsel argued, Cross, J. was obliged to assume the correctness of all matters deposed to in the Appellant's affidavit. The

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learned Chief Justice said that he was unable to agree with the contentions made on the Appellant's behalf. In his opinion Cross, J. came to the right conclusion.

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13. The learned Chief Justice said that he would prefer to rest his decision on four main grounds. Firstly, he said that the Public Service Commission Regulations, 1966, had no application whatever to the Appellant as

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Rees, J.A. demonstrated in his judgment. The Teaching Service Commission had never made any regulations pursuant to the authority conferred on it by section 102 of the Constitution and in the learned Chief Justice's view the Appellant's reliance on such regulations was misconceived. Secondly, in the learned Chief Justice's view the Appellant's affidavit failed to show either any nexus between the Principal's complaints against him and the Teaching Service Commission's decision to transfer him or any nexus between that decision and his complaint against the Principal to the Permanent Secretary in the Ministry of Education and Culture. Those deficiencies in the Appellant's

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to show either any nexus between the Principal's complaints against him and the Teaching Service Commission's decision to transfer him or any nexus between that decision and his complaint against the Principal to the Permanent Secretary in the Ministry of Education and Culture. Those deficiencies in the Appellant's

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to show either any nexus between the Principal's complaints against him and the Teaching Service Commission's decision to transfer him or any nexus between that decision and his complaint against the Principal to the Permanent Secretary in the Ministry of Education and Culture. Those deficiencies in the Appellant's

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affidavit were fatal to his Motion and made it impossible for him to begin to show that the Commission's order of transfer was a nullity. Thirdly, in the learned Chief Justice's view the order of transfer enjoyed a presumption of validity as such an order was clearly within the scope of the powers vested in the Teaching Service Commission. Such presumption could be overturned only by clear evidence that the order of transfer involved the exercise of some function outside the powers of the Teaching Service Commission. In the learned Chief Justice's view the facts alleged in the Appellant's affidavit completely failed to undermine or overturn that presumption.

Fourthly, the learned Chief Justice said that the preclusive provision of "section 102 (4) (b)" (sic) of the Constitution was expressed in perfectly clear and simple terms. In his view, section 102 operated so as to oust the jurisdiction of the Court to enquire into the Teaching Service Commission's order of transfer. After considering the Court's approach to ouster clauses generally and reserving for future consideration the relationship between sections 6 and 102 of the Constitution, the learned Chief Justice concluded his judgment by saying that he agreed that the Appellant's appeal should be dismissed with costs.

14. Rees, J.A. in his judgment summarised the facts and history of the proceedings. He said that the Appellant's application had been based on the ground that the

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decision or order of the Teaching Service Commission had violated the provisions of the Constitution, particularly section 1 thereof and then set out section 1 (a) of the Constitution. Rees, J.A. said that it had been brought to the notice of the Court of Appeal that it had been argued before Cross, J. that the order of transfer of the Appellant was a nullity because the Appellant has not given three months' notice and therefore the transfer was not made in accordance with regulation 135 of the Public Service Regulations, 1966.

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Rees, J.A. then traced the history of the relevant statutory provisions and reached the conclusion that when the Appellant was transferred from Penal to Palo Seco the Public Service Commission Regulations did not apply to the procedure to be adopted by the Teaching Service Commission in carrying out its functions.

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15. Rees, J.A. then considered what he described as the primary question in the appeal, namely, the effect of section 102 (4) (a) of the Constitution and whether the words of the section were wide enough to oust the jurisdiction of the Court. After referring to two decided cases, Rees, J.A. said that the question was whether the order of transfer was or was not a bona fide transfer within the meaning of section 99C (1) of the Constitution, the terms of which he then set out. In Rees, J.A.'s view the words "Subject to the provisions of this Constitution" meant that the Teaching Service Commission's powers were required to be exercised in

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a manner consistent and in harmony with the other provisions of the 1962 Constitution. Rees, J.A. then considered the Appellant's allegation that the order of transfer was intended as a punishment. Rees, J.A. pointed out that there was uncertainty in the Appellant's affidavit as to the person or authority to whom the allegations of misconduct of the Appellant were made. There was no evidence that such allegations were made to the Teaching Service Commission or that the complaints made by the Appellant to the Permanent Secretary of the Ministry of Education and Culture on July 10th, 1973 concerning a number of improprieties were brought to the notice of the Teaching Service Commission. Rees, J.A. could see nothing in the evidence to justify the allegation that the Teaching Service Commission transferred the Appellant from Penal to Palo Seco in consequence of reports of misconduct made by the Principal of the Penal Government Primary School. Further, Rees, J.A. said that Cross, J.'s view that the order of transfer was in the nature of an administrative decision was plainly right. Rees, J.A. referred to the fact that the letter dated the 20th March, 1975 stated that the transfer was in the exigencies of the service. For his part, Rees, J.A. could see nothing inconsistent with the provisions of the 1962 Constitution in the Teaching Service Commission taking the administrative step of transferring a teacher from one school to another in accordance with the requirements of policy or expediency.

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16. Rees, J.A. reached the conclusion that the order of transfer was intra vires section 99C (1) of the Constitution and that the Courts' jurisdiction to go behind that intra vires order to discover whether it was actuated by any ulterior motive or extraneous consideration was taken away by the plain and unambiguous words of section 102 of the 1962 Constitution. Rees, J.A. said that he would dismiss the Appellant's appeal with costs. p.30
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17. On the 2nd May, 1977, the Court of Appeal (Phillips, Rees and Scott, J.J.), granted conditional leave to the Appellant to appeal to the Privy Council against the said judgment of Court of Appeal and on the 18th June, 1977 the said Court (Phillips, Corbin and Scott, J.J.), granted to the Appellant final leave to appeal. pp.32 -
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18. The Respondent respectfully submits that this appeal should be dismissed and that the judgment of the Court of Appeal is correct. It is respectfully submitted that the Public Service Commission Regulations, 1966, do not apply in this case. Since Act No.25 of 1968, it has been the Teaching Service Commission which has been vested with the function inter alia of making orders of transfer: it was the Teaching Service Commission which performed that function in this case. It is respectfully submitted that the 1966 Regulations do not apply to any procedures to be adopted by the Teaching Service Commission in performing its functions. p.34

19. Whether or not the 1966 Regulations do apply to and bind the Teaching Service Commission, it is respectfully submitted that the order of transfer was not made in breach of the rules of natural justice because the Appellant had no right to be heard before the order of transfer was made.
20. Whether or not the 1966 Regulations do apply to and bind the Teaching Service Commission, it is respectfully submitted that the function of making an order of transfer is a function vested in the Teaching Service Commission by section 99C (1) of the Constitution and the proceedings herein raise the question whether the Teaching Service Commission has validly performed that function. In the premises, it is respectfully submitted that the provisions of section 102 (4) are effective to oust the jurisdiction of the Court to enquire into the matter.
21. All the submissions in this paragraph are made on the basis, contrary to the Respondent's submission in paragraph 18 hereof, that the 1966 Regulations do apply to and bind the Teaching Service Commission. Upon that basis, it is respectfully submitted that the absence of the three months' notice referred to in regulation 135 would not render an order of transfer a nullity. It is respectfully submitted that such an order made in the absence of three months' notice would be a valid and sufficient order ^{whether} for the purposes of regulation 135 ^{or otherwise} so as to bring into operation the provisions of regulation

135 (3) and (4) concerning the making of representations for a review. It is respectfully submitted that the Appellant's omission to make such representations precluded him from instituting the proceedings herein.

22. It is respectfully submitted that the Court of Appeal was entitled to examine the facts as disclosed by the Appellant's affidavit and to determine whether there was any or any sufficient evidence that the order of transfer was made in consequence of reports of misconduct made by the Principal of Penal Government Primary School. It is respectfully submitted that the Court of Appeal was right in its conclusion that the bare assertion made by the Appellant was not justified by the facts sworn to by him and that the Appellant's affidavit did not begin to show that the order of transfer was a nullity.

23. It is respectfully submitted that the Court of Appeal was ^{both} entitled to reach and right in reaching the conclusion that the Appellant's bare assertion that there were no exigencies of the service to warrant his transfer did not, in the absence of any facts in support thereof, justify a conclusion that there were no such exigencies.

24. The Respondent respectfully submits that the judgment of the Court of Appeal of Trinidad and Tobago is right and ought to be affirmed, and this appeal ought to be dismissed with costs, for the following (among other)

REASONS

(1) BECAUSE section 102 (4) of the Constitution ousts the jurisdiction of the Court to enquire into the

- questions raised in these proceedings.
- (2) BECAUSE, whether or not the 1966 Regulations apply in this case, the Appellant had no right to be heard before an order of transfer was made.
 - (3) BECAUSE the 1966 Regulations do not apply in this case.
 - (4) BECAUSE (alternatively to (3) above) if the 1966 Regulations do apply in this case:
 - (a) the order of transfer was a valid and sufficient order so as to bring into operation regulations 135 (3) and (4); and/or
 - (b) the Appellant's omission to make any representations for a review precluded him from instituting the proceedings herein.
 - (5) BECAUSE there was no sufficient evidence that the order of transfer was a nullity or violated any provisions of the Constitution and/or that it was not made in the exigencies of the service.
 - (6) BECAUSE of the other reasons given in the judgments of Cross, J., the learned Chief Justice and Rees, J.A.

STUART N. MCKINNON.

IN THE PRIVY COUNCIL

B E T W E E N :

KEMRAJH HARRIKISSOON Appellant

-and-

THE ATTORNEY-GENERAL
OF TRINIDAD AND TOBAGO Respondent

CASE FOR THE RESPONDENT

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