

JUDICIAL COMMITTEE OF THE
IN THE PRIVY COUNCIL

No. 40 of 1977.

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 1962.

Between

KEMRAJH HARRIKISSOON (Appellant)

and

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO (Respondent)

RECORD OF PROCEEDINGS

INGLEDEW, BROWN, BENNISON & GARRETT,
51, MINORIES,
LONDON EC 3N 1JQ,

Solicitors for the Appellant.

CHARLES RUSSELL & CO.
HALE COURT
LINCOLN'S INN
LONDONWC2 3UL

Solicitors for the Respondent

ON APPEAL
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
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And

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO (Respondent)

RECORD OF PROCEEDINGS

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JUDICIAL COMMITTEE OF THE
IN THE PRIVY COUNCIL

No. 40 of 1977.

ON APPEAL
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, 1962.

A N D

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IN THE MATTER OF THE APPLICATION OF KEMRAJH HARRIKISSOON A
PERSON ALLEGING THAT PROVISIONS OF THE CONSTITUTION
PROTECTING HIS HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS HAVE BEEN
AND ARE BEING CONTRAVENED IN RELATION TO HIM BY AN ORDER OR
DECISION OF THE TEACHING SERVICE COMMISSION FOR REDRESS IN
ACCORDANCE WITH SECTION 6 OF THE CONSTITUTION.

No. 1

Notice of Motion

In the High
Court.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No: 354 of 1975.

No. 1
Notice of
Motion

20

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND
TOBAGO BEING THE SECOND SCHEDULE TO THE TRINIDAD AND
TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962.

6th May,
1975.

AND

IN THE MATTER OF THE APPLICATION OF KEMRAJH
HARRIKISSOON A PERSON ALLEGING THAT PROVISIONS OF
THE CONSTITUTION PROTECTING HIS HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS HAVE BEEN AND ARE BEING
CONTRAVENED IN RELATION TO HIM BY AN ORDER OR
DECISION OF THE TEACHING SERVICE COMMISSION FOR REDRESS
IN ACCORDANCE WITH SECTION 6 OF THE CONSTITUTION.

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In the High
Court.

No. 1.
Notice of
Motion

6th May,
1975.

(continued)

TAKE NOTICE that the High Court of Justice at San Fernando will be moved on the 6th day of June, 1975 at the hour of 9 o'clock in the forenoon or so soon thereafter as Counsel may be heard by Counsel Ramesh L. Maharaj, Esq., on behalf of the above named Applicant Kemrajh Harrikissoon for the following reliefs, namely:-

- (a) an order declaring that a decision and/or order of the Teaching Service Commission communicated to the Applicant by a letter dated 25th January, 1975 and repeated by letter dated 20th March, 1975 were unconstitutional, illegal, void and of no effect; 10
- (b) an order that the status quo of the Applicant as Teacher 1 at the Penal Government Primary School be preserved until the hearing and determination of this application;
- (c) a further order declaring that the Applicant is entitled to be and to remain in employment as Teacher 1 at the Penal Government Primary School and is entitled to all the emoluments and privileges appertaining to his office; 20
- (d) Such further or other relief as the justice of the case may require and which the Court may grant pursuant to the provisions of Section 6 of the Constitution of Trinidad and Tobago;
- (e) Such further or other relief as the justice of the case may require including such orders, Writs and Directions as may be necessary or appropriate to enforce the human rights and fundamental freedoms guaranteed by the Constitution;
- (f) Costs. 30

AND FURTHER TAKE NOTICE that the Applicant will at the hearing rely upon the affidavit in support thereof and upon the grounds stated therein and upon such further evidence as the Court may receive.

Dated this 6th day of May, 1975.

/s/ Edward N. Furgus.
Applicant's Solicitor:

Edward Nathaniel Furgus, Solicitor and
Conveyancer of No. 3 Penitence Street,
San Fernando, whose address for service
in Port of Spain is in care of
Mr. L. Rajcoomarsingh of Sackville Street. 40

No. 2.

In the High Court.

Affidavit of Kemrajh Harrikissoon.

No. 2

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

Affidavit of
Kemrajh
Harrikissoon

No: 354 of 1975.

6th May,
1975.

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO BEING THE SECOND SCHEDULE TO THE TRINIDAD AND TOBAGO (CONSTITUTION) ORDER IN COUNCIL, 1962.

AND

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IN THE MATTER OF THE APPLICATION OF KEMRAJH HARRIKISSOON A PERSON ALLEGING THAT PROVISIONS OF THE CONSTITUTION PROTECTING HIS HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS HAVE BEEN AND ARE BEING CONTRAVENED IN RELATION TO HIM BY AN ORDER OR DECISION OF THE TEACHING SERVICE COMMISSION FOR REDRESS IN ACCORDANCE WITH SECTION 6 OF THE CONSTITUTION.

I, KEMRAJH HARRIKISSOON of 41 Naparima Mayaro Road, Cocoyea Village, in the town of San Fernando in the Island of Trinidad, make oath and say as follows:-

20

1. By letter dated the 9th day of October, 1972 I was appointed temporarily a Teacher 1 at Penal Government Primary School a public school wholly owned by the Government on two years probation with salary at the rate of \$415.00 per month in Range 26A (\$415 - 622/680) per month with effect from 11th September, 1972. The said appointment was made by the Teaching Service Commission.

30

2. The appointment and the holding there 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 of Trinidad and Tobago.

3. I continued in employment at the Penal Government Primary School and had been in continuous employment there from time to time, my appointment took effect until the 28th January 1975, when by a letter of that date the Teaching Service Commission purported to transfer me to Palo Seco Government Primary School. The purported transfer was not being effected with my consent and I do not wish to be

In the High Court. transferred there or to any other School. The letter was in the following terms:-

No. 2
Affidavit of
Kemrajh
Harrikissoon

Service Commission Department
Teaching Service Commission
31 Pembroke Street,
Port of Spain

28th January, 1975.

6th May, 1975. Sir,

(continued)

I wish to inform you that the Teaching Service Commission has been pleased to approve of your being allotted for duty as a Teacher 1 Palo Seco Government Primary School, Ministry of Education and Culture, as your present rate of salary, with effect from the date of your assumption of duty.

10

I have the honour to be,
Sir,
Your obedient Servant,

Director of Personnel Administration.

Mr. Kemrajh Harrikissoon
u.f.s. The Permanent Secretary
Ministry of Education and Culture:

20

4. On the 26th February, 1975 my Solicitor Mr. Edward Furgus on my instructions wrote to the Director of Personal Administration, Teaching Service Commission on my behalf a registered letter in the following terms:-

The Director of Personnel Administration
The Service Commission Department
Teaching Service Commission
31 Pembroke Street,
Port of Spain.

Dear Sir,

30

I act for Mr. Kemrajh Harrikissoon who holds an appointment in the Teaching Service at Penal Government School.

I am instructed by letter dated 28th January, 1975 addressed by you to him he was notified that he was appointed a Teacher at Palo Seco Government School with effect from an unspecified date.

I am further instructed that my client reported for duty at the Penal Government School yesterday the 25th day of February,

1975 but at the request of the Principal Mr. John Rampersad and Corporal of Police 6344 Ali he was forced to leave the School and to discontinue performance of his duties there.

In the High Court.

No. 2

10 My client has taken the opinion of Dr. Fenton Ramshoye, of Senior Counsel and Mr. Ramesh L. Maharaj, of Junior Counsel. Counsel have firmly expressed the opinion that the purported transfer of my client if that it be has been attempted in a manner which is at variance with the requirements of the Public Service Commission Regulations, 1966 which apply to him and that the purported transfer is in consequence null void and of no effect.

Affidavit of
Kemrajh
Harrikissoon

6th May,
1975.

(continued)

20 In the circumstances I take the view that my client who is ready and willing to perform his duties at the Penal Government School is being improperly prevented from so doing in breach of the terms and conditions which are attached to his contract of service with the Government of Trinidad and Tobago. I shall be grateful if you will take immediate steps to have my client re-instated in the performance of his duties forthwith and so avoid the loss and in-convenience which he must suffer if he has to seek redress in the Courts.

Meanwhile I wish to affirm that my client's position in relation to the emoluments of his office is that he will continue to claim them for the reason that he continued to be able ready and willing to serve in his position at the Penal Government School.

Yours faithfully,

Sgd. Edward Furgus.

5. No reply was received to the letter last mentioned.

30 6. On the 27th March, 1975 I received a letter from the Teaching Service Commission in the following terms:-

Service Commission Department
Teaching Service Commission
31 Pembroke Street,
Port of Spain.

20th March, 1975.

Sir,

I wish to inform you that the Teaching Service Commission has decided that you should be, and you are hereby transferred to the Palo Seco Government Primary School, in the exigencies

In the High Court.

of the Services.

No. 2

2. You should report to the Principal, Palo Seco Government Primary School for duty on 14th April, 1975 the date on which schools are due to re-open after the Easter vacation.

Affidavit of Kemrajh Harrikissoon

3. Kindly acknowledge receipt of this letter on the duplicate attached and return the signed copy to the person delivering this letter to you.

6th May, 1975.

I have the honour to be,
Sir,

(continued)

Your obedient Servant,
Director of Personnel Administration.

10

Mr. Kemrajh Harrikissoon
u.f.c. The Permanent Secretary
Ministry of Education and Culture:

7. I am advised that the purported transfer and the decision and order giving effect to it have been made in violation of the Public Service Regulations mentioned above and in particular regulation 135 thereof and that it is unconstitutional null and void and of no effect for the reason that they violated the provisions of the Constitution of Trinidad and Tobago and particularly the provisions of Section 1 thereof.

20

8. By reason of the provisions of the said Regulations the purported transfer has been attempted in violation of my right to equality of treatment from the Teaching Service Commission which is a public authority and to the protection of the law. The purported transfer is a punishment and was intended to be so by the Teaching Service Commission as a result of allegations of misconduct made against me by Mr. John Rampersad, the Principal of the Penal Government Primary School. The said allegations are unfounded and were never established at a proper hearing of them under Chapter VIII of the Public Service Commission Regulations 1966 or otherwise. The said allegations were made after complaints were made by me to the Permanent Secretary Ministry of Education and Culture by letter dated 10th July, 1973 concerning a number of improprieties at the Penal Government Primary School including a breakdown of discipline.

30

9. The purported transfer which is alleged to be made because of the exigencies of the service was not in fact so made and no exigencies exist to warrant the purported transfer without compliance with the said Regulations

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concerning notice and the right of a teacher to make representations to the Teaching Service Commission before a decision to transfer is taken by the Commission.

In the High Court.

No. 2.

Affidavit of Kemrajh Harrikissoon

6th May, 1975.

(continued)

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10. If the transfer is put into effect I shall be obliged to incur travelling expnses at \$70.00 per month to enable me to be present at the Palo Seco Government Primary School and to perform my duties there. I shall be obliged in addition to spend at least four hours each day in actual travel and in waiting for taxis for the reason that although the actual journey takes one hour it will be necessary for me to wait to change taxis at four stages of the journey each way from my home to Palo Seco. The matters referred to in this paragraph will cause me not only financial hardship but severe inconvenience. The Penal Government Primary School is 6 miles away from my home whereas the Palo Seco Primary School is 36 miles away.

20

11. No facts or matters have been disclosed to me by the Teaching Service Commission to warrant a claim that my purported transfer was in the exigencies of the service and at no time was I heard or given an opportunity to be heard in connection with the proposed transfer which I am advised and verily believe was made in breach of the rules of natural justice.

30

12. In the premises I pray that this Honourable Court will in the exercise of the powers granted of the High Court in accordance with Section 6 of the Constitution of Trinidad and Tobago in exercise of all other powers enabling the Court in that behalf grant the relief sought in the notice of motion herein and such other relief as may be just.

SWORN to at No. 3, Penitence Street, in the town of San Fernando this 6th day of May, 1975.

↓
↓
↓
↓
↓

Sgd. Kemrajh Harrikissoon

Before me,

Sgd. Dalton Chadee

Commissioner of Affidavits:

FILED ON BEHALF OF THE APPLICANT HEREIN:

In the High Court.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No. 3.

NO; 354/75.

BETWEEN

Judge's Notes of Evidence

KEMRAJH HARRIKISSOON APPLICANT

AND

23rd June, 1975.

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO RESPONDENT

Before the Honourable Mr. Justice
P.L.U. Cross.

Ramsahoye Q.C. - Ramesh Maharaj with him for applicant.

10

Solicitor General - Brooks with him for Respondent.

Adjourned to 23rd June, 1975 an application of Respondent.

Resumed 23rd June, 1975:

Dr. Ramsahoye and R. Maharaj for applicant.

Warner Solicitor General and Brooks for Respondent.

Warner has

Section 102 (4) of the Constitution - maintaining the prerogative of Crown in respect of conditions of Service of Crown servants.

Sec 99 (c) (1) as amended by Act 25/68 when Commission transferred applicant it was exercising its function under Sec. 99 (c).

20

Re: John Stanley Fisher (1966) 9 W.I.R. p. 465.

Courts never had jurisdiction even before the constitution words subject to this constitution appear 5. (99)(c) not in Sec 102 (4) what it means is that if any other section other than 99 (c) 99 (c) (2)

Court can only ask whether it was a function of the T.S.C.

If it was then Court cannot inquire into its validity.

In the High
Court.

In Re Langhorne 14 W.I.R. 353 at 356

No. 3.

In Re Sarran 14 W.I.R. 361 at 364

Judge's Notes
of Evidence.

No section similar to 125 (8) of Guyana Constitution exists
in Trinidad and Tobago constitution.

23rd June,
1975.

Chite - E.A. Community (1970) E.A.R. p. 487 at 490

Evelyn - Chichester 15 W.I.R. 410 at 428 and 429 and 435.

(continued)

Ramsahoye addresses:

10 Anisminie Ltd V Foreign Compensation (1969) 1 All E.R. 208
Re Sarran 14 W.I.R. 361 at p. 372 and 371

Breach of the rules of natural justice ousts the jurisdiction
of the T.S.C.

P.S.C. Regulations 1966

Anismic Case at p. 212

Order of transfer not made in pursuance of a function of
the T.S.C.

Exclusion clause does not protect a nullity.

If rules of natural justice should apply courts would always
have jurisdiction.

20 Lord Pearce p. 233.

Jurisdiction to transfer did not become a function until
condition precedent to its exercise had been fulfilled eg.
notice and request to make representations.

Sowatilal -vs- Fraser (1960) 3 W.I.R. 70.

Malick No. 20 of 1974 - Privy Council (Diplock's judgment) p.3.
S. 2(h) of Constitution - no opportunity to make representations

Carlic -vs- Queen (1957) 10 D.L.R. 685 (Canada)

Chichester's case p. 436

30 Did the applicant have a right to be heard? (1) Once your
rights and obligations are being determined by any public
authority you have a right to be heard. (2) Once there is
such a right applicant becomes entitled to apply under Sec. 6
of Constitution.

No exigency existed to deny rights to be heard.

In the High Court. Exigencies must mean necessities - hard, pressing necessities of the situation become prima facie Reg. 135 with the constitution.

No. 3.

Trinidad and Tobago Law Reports 17 W.I.R. p.448

Judge's Notes of Evidence Adjourned to 24/6/75 at 9.00 a.m.

24th June, 1975. 24th June, 1975 - Resumed:

Appearances as before:

(Continued)

Solicitor General replies:

Smith v E. Rural District Council not overruled in (1969) 2 A.C. at p. 149 but distinguished Lord Pearce at p. 200 - an administrative.

10

Service of the Crown is not a property right and it is certainly not an enforceable right.

Re Smith Judicial Review of Administrative Action p. 162

Chichester's case p. 448

Regulations do not confer any rights on the applicant
v- War Office 1959 1 W.I.R. 1046 at 1053. Diplock L.J. only statute can restrict Crown's right to dismiss
Not shown that a public servant ever had any right to be heard before he is transferred.

20

Nixon v A.G. (1930) 1 Ch. 566 at 594 and 599.

Adjourned to 30th June, 1975 for Ruling.

30th June, 1975. 30th June, 1975 Resumed

Appearances as before:

Dwarika holding for Solicitor General:

Ruling read.

TRINIDAD AND TOBAGO:

In the High
Court.

IN THE HIGH COURT OF JUSTICE

No. 4.

No: 354 of 1975.

IN THE MATTER OF THE CONSTITUTION
OF TRINIDAD AND TOBAGO BEING THE
SECOND SCHEDULE TO THE TRINIDAD AND
TOBAGO (CONSTITUTION) ORDER IN
COUNCIL, 1962.

Written
Judgment of
Justice
Cross.

30th June,
1975.

And

18

IN THE MATTER OF THE APPLICATION OF
KEMRAJH HARRIKISSOON A PERSON ALLEG-
ING THAT PROVISIONS OF THE CONSTITU-
TION PROTECTING HIS HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS HAVE BEEN AND ARE
BEING CONTRAVENED IN RELATION TO HIM
BY AN ORDER OR DECISION OF THE TEACHING
SERVICE COMMISSION FOR REDRESS IN
ACCORDANCE WITH SECTION 6 OF THE
CONSTITUTION.

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Before the Honourable
Mr. Justice P.L.U. Cross.

Dr. F. Ramsahoye, Q.C. and Mr. R.L. Maharaj for the
Applicant.

Mr. A. Warner, Q.C. Solicitor-General and Mr. I. Blackman
for the Attorney General.

%%%%%%%%%%%%%%%%%%%%%%%%

RULING

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On the 6th of May, 1975 the applicant who holds an
appointment in the Teaching Service of Trinidad and Tobago
filed notice of Motion claiming, inter alia, that the
decision and/or order of the Teaching Service Commission
communicated to him by letters dated respectively 28th
January 1975 and 20th March 1975 transferring him from the
Penal Government Primary School to the Palo Seco Government
Primary School was unconstitutional, illegal, void and of
no effect. The other reliefs claimed all stem from the alleged
unconstitutional decision to transfer him from one school to
another.

In the High Court.

No. 4.

Written Judgment of Justice Cross.

30th June, 1975.

(continued)

The Learned Solicitor-General has taken the preliminary objection that the Court has no jurisdiction to enquire into the matter.

Section 6 of the Constitution of Trinidad and Tobago which is set out as the Second Schedule to the Trinidad and Tobago (Constitution) Order in Council 1962 (hereinafter referred to as "the Constitution") reads as follows:-

"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 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. 10

(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:" 20

Prima facie, this provision appears to confer on the High Court jurisdiction to hear this motion, but there are other provisions of the Constitution to which regard must be had.

Section 99A of the Constitution, as amended by Act No. 25 of 1968 establishes a Teaching Service Commission and section 99C provides as follows:-

"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:" 30

The power to transfer the applicant from one school to another is without doubt one of the functions vested in the Teaching Service Commission by the Constitution.

Section 102 (4) (a) of the Constitution provides that the question whether a Commission to which the section 40

applies has validly performed any function vested in it by or under the Constitution "shall not be enquired into by any Court."

In the High Court.

No. 4.

By virtue of sub-section 5 the Teaching Service Commission is such a Commission. The language of the sub-section is in my view clear, unqualified and unambiguous.

Written Judgment of Justice Cross.

In Smith v. East Elloe R.D.C. (1956) 1 All E.R. 855 at p858
Viscount Simonds stated the principle thus:

30th June, 1975.

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"My Lords, I think that anyone bred in the tradition of the law is likely to regard with little sympathy legislative provisions for ousting the jurisdiction of the Court, whether in order that the subject may be deprived altogether of remedy or in order that his grievance may be remitted to some other tribunal. But it is our plain duty to give the words of an act their proper meaning and for my part, I find it quite impossible to qualify the words of the paragraph in the manner suggested. It may be that the legislature had not in mind the possibility of an order being made by a local authority in bad faith, or even the possibility of an order made in good faith being mistakenly, capriciously, wantonly challenged. This is a matter for speculation. What is abundantly clear is that words are used which are wide enough to cover any challenge which any aggrieved person may think fit to make."

(continued)

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There is, in the other hand, abundant authority for the proposition advanced by Counsel for the applicant that Courts will not apply an ouster clause where an inferior tribunal has acted without jurisdiction or exceeded the limits of its jurisdiction. The former case, Counsel argues, comprehends a failure to comply with the requirements of natural justice. This may well be so but in the instant case there are at least three answers to this argument.

30

Firstly, in transferring the applicant the Teaching Service Commission is performing a purely administrative function (see the words of Lord Peace in Anisminic v. Foreign Compensation Commission (1969) 2 A.C. 147 at p. 201).

40

Secondly, the applicant holds an office of emolument in the public service, that is in the service of the Crown in a civil capacity in respect of the Government of Trinidad and Tobago. In my view the following statement of the author of de Smith's Judicial Review of Administrative Action (2nd Edition) at p. 162 is a correct statement of the law:

In the High Court.

No. 4.

Written Judgment of Justice Cross.

30th June, 1975.

(Continued)

"Some individual interests which are accorded procedural protection by law in other countries fall outside the ambit of the rule (audi alteram partem) in English Law. For example, no legally enforceable requirements at all have to be observed by the Crown in relation to appointments to, promotions or transfers within or dismissals from the civil service"

Thirdly, Counsel's arguments that the rules of natural justice have not been observed is based on the provisions of Regulation 135 of the Public Service Commission Regulations, 1966, which reads as follows:-

"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."

The applicant was not given three months' notice and counsel has urged that the giving of the notice is a condition precedent to the exercise of the power of transfer and failure to do so means that the transfer was without jurisdiction. With respect I do not agree. The power to transfer is conferred by the Constitution not by the regulations and the latter neither limits that power nor confers any rights on the applicant (see Nixon v. Attorney General (1930) 1 Ch. 566 at p. 606). In any case the letter to the applicant dated 20th March 1975 cites the exigencies of the service as the reason for the transfer. In addition, the argument that the applicant has been deprived of the right to make representation overlooks the provision of paragraphs (3) and (4) of regulation 135 which provide that -

"(3) A teacher who is aggrieved by an order made under paragraph (1) 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) such teacher shall within 14 days of the receipt of the order, shall give notice in writing to the Permanent Secretary and shall submit with the notice his representations in writing."

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The applicant made no representation either within the period or to the persons stipulated in the regulation.

In the High Court.

I have therefore concluded that this application raises the question whether the Teaching Service Commission has validly performed a function vested in it by the Constitution and the preliminary objection of the learned Solicitor-General is well founded. The Court has no jurisdiction to hear this motion.

No. 4.
Written Judgment of Justice Cross

It is accordingly dismissed with costs to be taxed.

30th June, 1975.

Dated this 30th day of June, 1975.

10

P.L.U. Cross.

JUDGE.

No. 5.

No. 5.

Notice of Appeal

Notice of Appeal.

TRINIDAD AND TOBAGO:

7th July, 1975.

IN THE COURT OF APPEAL

Civil Appeal No. 59 of 1975.

BETWEEN

KEMRAJH HARRIKISSOON Appellant/Applicant

AND

20

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

TAKE NOTICE that the Applicant/Appellant being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the High Court contained in the judgment of the Honourable Mr. Justice Cross dated the 30th day of June, 1975 doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

30

And the Appellant further states that the names and addresses including his own of the persons directly affected by the Appeal are those set out in paragraph 5.

the Appeal
Court.

No. 5.

Notice of
Appeal

17 July,
1975.

(continued)

2. The Applicant's Motion is dismissed with costs to be taxed.

3. GROUNDS OF APPEAL :

(a) The Learned Judge erred in holding that the rules of natural justice do not apply to decisions made by the Teaching Service Commission in the exercise of administrative functions which involve appointments on transfer.

(b) The learned Judge erred in holding that persons holding offices of emolument under the Crown in Trinidad and Tobago are subject to the absolute discretion of the Crown or Service Commissions in relation to appointments on transfer.

10

(c) The learned Judge erred in holding that the Applicant had no enforceable right to have the Public Service Regulations 1966 apply to his transfer or purported transfer. In particular:-

(i) The learned Judge in deciding upon the preliminary objection was obliged to assume the correctness of all matters deposed to in the affidavit of the applicant including his disposition that no exigencies of the service arose to require a dispensation with notice supported as this was by the deposition filed in favour of the Respondent.

20

(ii) Notice of the proposed transfer and an opportunity to be heard was in any event required even though not in the same terms as were provided by the Regulations.

(iii) The learned Judge erred in holding that the Applicant could have made representations under regulation 135 of the Public Service Regulations for the reason that the right to make representation within 14 days under that regulation only applies where the notice of a proposed transfer is actually given in accordance with regulation 135 (1).

30

(iv) The decision of the Teaching Service Commission was made outside of the functions vested in the Commission and without jurisdiction and was a nullity which was not protected by Section 99 of the Constitution. In particular the Commission denied the Applicant:-

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- (a) the protection of the law;
- (b) equality of treatment;
- (c) the protection of procedural provisions existing for the protection of his fundamental rights.
- (d) the right to hold an office of emolument at a particular school without being removed therefrom to another appointment at another school in accordance with law.

In the Appeal Court.

No. 5.

Notice of Appeal

7th July, 1975.

(Continued)

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(v) The Appellant was entitled in law to a hearing on the merits.

4. The relief sought is that the judgment of the High Court dismissing the Applicant's Motion be set aside and, judgment be entered for the Applicant in terms of the prayer in the motion alternatively the matter be remitted to be determined on its merits together with such further or other relief as may be just and that the Respondent be ordered to pay the costs of the hearing in the Court of Appeal and in the Court below.

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5. Persons directly affected by this Appeal:-

N A M E S

A D D R E S S E S:

Kemrajh Harrikissoon

41, Naparima Mayaro Road,
San Fernando.

The Hon Attorney General

Red House, Port of Spain.

D A T E D this 7th day of July, 1975.

/s/ Edward Furgus
Solicitor for the Appellant:

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Plaintiff's/Appellant Solicitor
Edward Nathaniel Furgus of No. 3
Penitence Street, San Fernando whose
address for service is the same and
in Port of Spain is in care of Mr.
L. Rajcoomarsingh of Sackville Street.

To: The Hon Attorney General
Red House
Port of Spain.

and

To: The State Solicitor:

In the Court
of Appeal.

No. 6.

No. 6.

JUDGMENT OF SIR ISAAC HYATALI C.J.

Judgment of
Sir Isaac
Hyatali C.J.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

29th March,
1977.

Civil Appeal No. 59 of 1975.

Between

KEMRAJH HARRIKISSOON

Appellant

And

THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO

Respondent

Coram: Sir Isaac E. Hyatali, C.J.
C.E.G. Phillips, J.A.
E.A. Rees. J.A.

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March 29, 1977.

Dr. F. Ramsahoye, S.C. and R.L. Maharaj - for the appellant.
C. Bernard and I. Blackman - for the respondent.

J U D G M E N T .

Delivered by Sir Isaac Hyatali, C.J.:

I am of the same opinion. The Trinidad and Tobago
Constitution (Amendment) Act 1968, established the Teaching
Service Commission with effect from 26 September 1968 and
included it as one of the Commission to which s. 102 of the
1962 Constitution (the Constitution) applied. One of the main
issues raised in these proceedings concerns the interpretation
and effect of s. 102 (4) (a) of the Constitution, which ousts
the jurisdiction of the Court to enquire into the question
whether the Commission has validly performed any function
vested in it by or under the Constitution. It is an issue of
some significance and I accordingly add some views of my own
to the judgment of Rees, J.A. with which I agree.

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The appellant was a Teacher 1 in the Ministry of Education and Culture. As such, he occupied a public office in the Teaching Service and fell under the jurisdiction of the Commission which, subject to the provisions of the Constitution, was vested with "power to appoint persons to hold or act in public offices in the Teaching Service (including power to make appointments or promotion and transfer and to confirm appointments) and to remove and exercise disciplinary control over persons holding or acting in such offices . . ."

In the Court
of Appeal.

No. 6.

Judgment of
Sir Isaac
Hyatali C.J.

29th March,
1977

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By letter dated 28 January 1975, the Commission allotted the appellant for duty at the Palo Seco Government Primary school, with effect from the date of his assumption of duty at his then current rate of salary. He was then employed at the Penal Government Primary School. By letter dated 24 February 1975 his solicitor protested against the transfer in a letter addressed to the Director of Personnel Administration, the Secretary of the Commission, claiming that it was "attempted in a manner which was at variance with the requirements of the Public Service Commission Regulations 1966" (the Regulations) which applied to him, and was in consequence "null, void and of no effect." By letter dated 27 March 1975, the Commission informed him that he was transferred to the Palo Seco Government Primary School in the exigencies of the Service and that he should report for duty there on 14 April 1975. He never did.

(continued)

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Instead, by a notice of motion dated 6 May 1975, he moved the High Court under s.6 of the Constitution for (a) an order declaring that his transfer was unconstitutional, illegal, void and of no effect; (b) an order that his status quo be preserved until the hearing and determination of his motion; (c) an order declaring that he was entitled to be and remain in employment at the school from which he was transferred; and (d) such ancillary relief as the justice of the case required. The gist of his grievance was set out in paragraph 7 of his affidavit, which alleged that his transfer was made in violation of the Regulations and in particular regulation 135 thereof and that it was unconstitutional, void and of no effect for the reason that it violated the provisions of the Constitution and particularly s. 2 thereof.

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In support of the violation referred to, he alleged in another paragraph of his affidavit that his transfer was a punishment and was intended to be such by the Commission as a result of unfounded allegations of misconduct made against him by the Principal of Penal Government Primary School following certain complaints which he, the appellant, had made against the Principal to the Permanent Secretary in the Ministry of Education and Culture on 10th July 1973. The said unfounded

In the Court
of Appeal.

allegations, he stated, were never established at a proper hearing of them under the Regulations.

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Sir Isaac
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29th March,
1977.

In reference to the Principal's allegations of misconduct against him he failed to state when they were made, to whom they were made and what they were about. More to the point, he omitted to state whether these allegations were made to the Commission or whether he was charged with misconduct in consequence of these allegations. Further, there was no allegation that the complaint he made against the Principal, was ever brought to the notice of the Commission.

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(continued)

He exhibited to his affidavit, the Commission's letter to him which stated that he was transferred in the exigencies of the Service, but he alleged without any facts to support it that no exigencies existed to warrant his purported transfer without compliance with the Regulations concerning notice and the right of a teacher to make representations to the Commission before it took a decision to transfer.

Before Cross, J. in the Court below, counsel for the respondent submitted, in limine, that the Court's jurisdiction to hear the motion was ousted by the clear words of s. 102 (4) (b) of the Constitution. Counsel for the appellant countered, that he was entitled to a hearing on the merits, on the ground that he had alleged facts to establish that the Commission's decision was null and void. Those facts, he contended, showed that the Commission, in making the order of transfer had violated the rule of natural justice, audi alteram partem by failing to give the appellant, as was provided for in the Regulations, three months prior notice of that order and the opportunity of making representations for a review thereof. In the circumstances, he argued, the preclusive provisions of the Constitution had no application, since the Commission had performed a function which was not vested in it by or under the Constitution. In support of that proposition he relied on Anisminic v Foreign Compensation Commission & Anor. (1969) 1 All E.R. 208.

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The learned judge rejected the appellant's contentions and held (a) that in transferring the appellant, the Commission had performed a purely administrative function to which the rules of natural justice had no application; (b) that by reason of the fact that the appellant was a public officer he came within the disabilities correctly expressed by the author of de Smith's Judicial Review of Administrative Action (2nd Edn.) 162 to this effect:

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"Some individual interests which are accorded procedural protection by law in other countries fall outside the ambit of the rule audi alteram partem in English law. For example, no legally enforceable requirements at all have to be observed by the Crown in relation to appointments to promotion or transfers within or dismissals from the civil service;"

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1977.

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and (c) the Commission's power to transfer was derived from the Constitution itself and not the Regulations and that the latter neither limited that power nor conferred any rights on the appellant. He quoted Nixon v Attorney General (1930) 1 Ch. 566, 606 in support of that conclusion. In the result, the learned judge ruled that the respondent's objection, in limine, succeeded because the appellant's motion in reality raised the question whether the Commission had validly performed a function vested in it by or under the Constitution.

(Continued)

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Counsel for the appellant, repeated before this Court, his submissions that the Commission's order was a nullity on the grounds alleged in the appellant's affidavit and contended that he was entitled in law to a hearing on the merits, since the learned trial judge was obliged to assume the correctness of all matters deposed to in the said affidavit. I am unable to agree with that contention. On the contrary, I am of opinion that the learned judge came to the right conclusion, but I would prefer to rest my decision on four main grounds as follows:

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Firstly, the appellant founded his case on a violation of the Regulations which had no application whatever to him as Rees, J.A. has demonstrated. As the Commission never made any Regulation in pursuance of the authority conferred on it by s.102, his reliance on them was misconceived and ill-advised.

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Secondly, there were fundamental deficiencies in the case set out by the appellant in his affidavit. As I have pointed out, his allegations therein not only failed to show any nexus between the Principal's complaints against him and the Commission's decision to transfer him, but also any nexus between that decision and his complaint against the Principal to the Permanent Secretary in the Ministry of Education and Culture. These deficiencies were fatal to his motion and rendered it impossible for him to begin to show that the Commission's order of transfer was a nullity.

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of Appeal.

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(Continued)

Thirdly, the order of transfer being clearly within the scope of the powers vested in the Commission, enjoyed a presumption of validity, which could not be successfully assailed or removed, unless it was shown beyond a reasonable doubt that the Transfer did not involve the exercise of a function vested in the Commission but the exercise of a different and forbidden function. I would place this presumption on the same footing as that which applies to the constitutional validity of enactments passed by Parliament. See in this connexion Attorney General v Mootoo 10 Civil Appeal No. 2 of 1975 of 26 March 1976. The facts alleged in the appellant's affidavit, failed completely to undermine or overturn that presumption.

And fourthly, the preclusive provision of s.102(4) (b) of the Constitution is expressed in perfectly clear and simple terms. There can be no doubt about its meaning or intent. It does not therefore collide with "the fundamental rule" as it was called by McNair, J. in Francis v Yiewsley & West Drayton U.D.C. (1958) 1 Q.B. 478, or "the well known rule" as Sachs, J. described it in Commissioners of Customs & Excise v Cure & Deeley Ltd. (1962) 1 Q.B. 340, 20 357, "that a statute should not be construed as taking away the jurisdiction of the courts in the absence of clear and unambiguous language to that effect". For present purposes, the provision is, in my view, the same in scope, clarity and intent as that considered by the House of Lords in Smith v Elloe Rural District Council (1956) 1 All E.R. 855, in which Viscount Simonds confidently asserted his opinion of the effect of a provision so expressed, in these terms:-

"What is abundantly clear," he said, 30
"is that the words which are used are wide enough to cover any challenge which any aggrieved person may think fit to make."

That dictum was thought to be too widely expressed in the Anisminic case (supra) but recently in R. v Secretary of State for the Environment ex parte Ostler (1976) 3 All E.R. 90, the Court of Appeal in England stated that Smith's case (supra) was still good law.

For my part, I think that there is much to be said in 40
favour of the view, that an ouster clause should not inhibit the Court from intervening to review and, if necessary, to quash an order by an administrative body, if it is shown to be ultra vires the enactment under which it purported to act, or to be made under an authority not conferred by such enactment, or to be tainted by fraud or like considerations.

I do not think that Viscount Simonds intended to include such cases in the expression "any challenge" but however that may be, I am firmly of opinion that a Court would be acting improperly if a perfectly clear ouster provision in the Constitution of a country which is its supreme law, is treated with little sympathy, or scant respect, or is ignored without strong and compelling reasons. Dr. Durga Das Basu in his learned monograph on the Constitution of India (1965) Vol. 1 p.338 expresses, in my view, a correct approach for the Courts when dealing with preclusive provisions and for present purposes I respectfully adopt his opinion. In reference to the provisions of the Constitution of India, which confer final power on the President or other administrative authority to decide specified questions he states:

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(Continued)

"Where the Constitution itself excludes such questions, the Courts lose their jurisdiction to entertain those questions altogether because they have no power to override the Constitution and the questions, accordingly, become non-justiciable.

A different situation arises where a statute confers 'final' power upon some administrative authority or tribunal, because the constitutional jurisdiction of our superior Courts cannot be taken away by statutory provisions. Even the jurisdiction of the inferior courts has been saved by the judicial construction that such statutory provisions are intended to exclude the jurisdiction of the courts of law only where the decision of the administrative authority is intra vires, so that the courts retain their jurisdiction to determine whether the decision or order of the statutory authority is ultra vires or without jurisdiction."

With respect to the decision of this Court in the Thornhill case No. 39/74 dated 27 December 1976 to which Rees, J.A. has made reference, I also, would reserve for future consideration the question whether a person is entitled to obtain redress under s.6 of the Constitution on the strength of an allegation that a Commission established under s.102 thereof has infringed in relation to him one or more of the rights and freedoms entrenched in the Constitution. For these reasons I agree that the appeal should be dismissed with costs.

Isaac E. Hyatali.
Chief Justice.

I agree.

Clement E. Phillips.
Justice of Appeal.

In the Court
of Appeal.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

No. 7.

Civil Appeal No. 59 of 1975.

Judgment of
Rees J.A.

Between

29th March,
1977.

KEMRAJH HARRIKISSOON

Appellant

And

THE ATTORNEY GENERAL OF TRINIDAD
AND TOBAGO.

Respondent

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Coram: Sir Isaac E. Hyatali, C.J.
C.E.G. Phillips, J.A.
E.A. Rees, J.A.

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March 29, 1977.

Dr. F.Ramsahoye (R. Maharaj with him) - for the appellant.
C. Bernard and I. Blackman - for the respondent.

J U D G M E N T

Delivered by Rees, J.A.:

The appellant Kemrajh Harrikissoon of 41 Naparima Mayaro Road, Cocoyea Village, was appointed by the Teaching Service Commission to the post of Grade 1 Teacher at Penal Government Primary School with effect from September 11, 1972 from which date he became a member of the Teaching Service. On January 28, 1975 the Director of Personnel Administration informed him by letter that the Commission had allotted him for duty as a Grade 1 Teacher at Palo Seco Government Primary School as from the date of his assumption of duty. He did not think that it was to his best interests to comply with the order because Palo Seco is much further away than Penal from Cocoyea Village and the effect of the transfer would have been to increase his travelling expenses and cause him much inconvenience. He instructed his solicitor to inform the Director of Personnel Administration that he had reported for duty at Penal Government Primary School but was prevented from performing his duties by the Principal of the school and

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a corporal of police in breach of the terms of his contract with the Government of Trinidad and Tobago. In the Court of Appeal.

On March 20, 1975 the Director of Personal Administration directed another letter to the appellant in the following terms.

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Judgment of
Rees J.A.

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1977.

(Continued)

"I wish to inform you that the Teaching Service Commission has decided that you should be, and you are hereby transferred to the Palo Seco Government Primary School in the exigencies of the Service.

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2. You should report to the Principal, Palo Seco Government Primary School for duty on 14th April, 1975 the date on which schools are due to re-open after the Easter vacation.

3. Kindly acknowledge receipt of this letter on the duplicate attached and return the signed copy to the person delivering this letter to you."

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The appellant did not carry out the order contained in that letter, but on May 6, 1975 initiated court proceedings. He applied to the High Court under the provisions of s.6 of the former Constitution contained in the Second Schedule to the Trinidad and Tobago (Constitution) Order-in-Council seeking inter alia a declaration that the decision or order of the Commission transferring him from Penal to Palo Seco was unconstitutional, illegal, void and of no effect. He based his application on the ground that the decision or order violated the provisions of the former Constitution, particularly s.1 thereof which so far as material, provided:

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"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;"

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of Appeal.

No. 7.

Judgment of
Rees J.A.

29th March,
1977.

(Continued)

Cross J. held that he had no jurisdiction to enquire into the matter because the power to transfer the appellant from one school to another is one of the functions of the Commission and s.102(4)(a) of the former Constitution provides that the question whether the Commission has validly performed any function vested in it by or under the Constitution shall not be enquired into.

In the Attorney General of Trinidad and Tobago and Thornhill (Civil Appeal No. 39 of 1974 dated December 27 1976) this court held that if there was an infringement of one or other of a citizen's fundamental rights as set out in s.1 of the former Constitution and it is as a result of the action of persons who are entitled collectively or individually to exercise the plenitude of legislative, executive or judicial power, the remedy is by way of application to the High Court for redress in accordance with s.6 of the former Constitution. If, on the other hand, it is an infringement by persons who are not entitled to exercise such legislative, executive or judicial power then protection must be sought from the ordinary law of the land. It has not been debated in this court the category into which the Teaching Service Commission falls and therefore I am not prepared to pronounce upon it, but will deal with the arguments which have been advanced. 10

It was brought to our notice that before the trial judge it was argued that the order of transfer of the appellant was a nullity because the appellant was not given three months' notice and therefore the transfer was not made in accordance with the provisions of reg. 135 of the Public Service Regulations, 1966. In his judgment Cross J. said that the power to transfer is conferred by the Constitution and not by the regulations. I think that the position is this. By virtue of s.54(3) of the Education Act, 1963 the Public Service Commission was charged with the responsibility for appointments including transfers of, and disciplinary control over members of the Teaching Service. By s.102 of the former Constitution that Commission was given power to regulate its own procedure by regulations or otherwise, subject to ministerial approval. Accordingly the 1966 Regulations were made and r. 135(1) thereof deal with the procedure to be followed when transferring teachers from one school to another. 30

In 1962 the former Constitution was amended by the Trinidad and Tobago (Constitution) Amendment Act, 1968 and by s.2 thereof, ss. 99A to 99C were inserted. Section 99A established the Teaching Service Commission for Trinidad and Tobago and s. 99C vested therein the responsibility for appointments including those on transfer and disciplinary control over persons in the Teaching Service. Like the Public Service 40

Commission, the Teaching Service Commission was given power by s.102(1) to make regulations to govern its own procedure, but as far as I am aware, no such regulations have been made. The result is that in 1972 when the appellant was appointed by the Teaching Service Commission he fell under its jurisdiction and in 1975 when he was transferred from Penal to Palo Seco there were no Regulations regulating the procedure to be followed by the Teaching Service Commission when transferring a teacher from one school to another. What is in my opinion beyond question is that when in 1975 the appellant was transferred from Penal to Palo Seco the Public Service Commission Regulations, 1966, had nothing to do with the procedure to be adopted by the Teaching Service Commission in carrying out its functions.

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Judgment of Rees J.A.

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(Continued)

I pass on to the primary question in this appeal. What effect, if any, had s.102 on s.99C of the former Constitution. I think the answer must depend on its statutory context. Section 102 of the former Constitution, so far as material, provided:

20 "102(4) The question whether
 (a) a Commission to which this section applies has validly performed any function vested in it by or under the Constitution shall not be enquired into in any Court."

The Teaching Service Commission is such a Commission. It was submitted by counsel for the respondent that the words of that section are wide enough to oust the jurisdiction of the court. In this connection he placed reliance on Smith v East Elloe Rural District Council (1956) 1 All E.R. 855 (H.L) in which the plaintiff questioned a compulsory purchase order made by a rural district Council. The defendants applied to have the writ and all subsequent proceedings set aside for lack of jurisdiction, on the ground that by a statutory provision the compulsory purchase order could not after a certain period be questioned in any legal proceedings. The House of Lords by a three to two majority took the view that the words "shall not be questioned in any legal proceedings" of the statutory provision were comprehensive enough to oust judicial proceedings by precluding the order from being challenged after the statutory period allowed. Viscount Simonds said:

"My Lords, I think that anyone bred in the tradition of the law is likely to regard with little sympathy legislative provisions for ousting the jurisdiction of the court, whether

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In the Court
of Appeal.

No. 7.

Judgment of
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29th March,
1977.

(Continued)

in order that the subject may be deprived altogether of remedy or in order that his grievance may be remitted to some other tribunal. But it is our plain duty to give the words of an Act their proper meaning and, for my part, I find it quite impossible to qualify the words of the paragraph in the manner suggested. It may be that the legislature had not in mind the possibility of an order being made by a local authority in bad faith, or even the possibility of an order in good faith being mistakenly, capriciously or wantonly challenged. This is a matter of speculation. What is abundantly clear is that words are used which are wide enough to cover any kind of challenge which any aggrieved person may think fit to make".

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Thirteen years later the House of Lords had to consider Anisminic Ltd. v. The Foreign Compensation Commission (1969) 1 All E.R. 208 which had to do with s. 4(4) of the Foreign Compensation Act, 1950 (U.K.) which provided that "the determination of the Commission of any application made to them under this Act shall not be called in question in any court of law". The House held that that clause only applied to a real determination and not to a purported determination.

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In the present case the question then that follows is whether the order of transfer was or was not a bona fide transfer within the meaning of s. 99C which provides as follows:

"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:"

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It will be seen that the Teaching Service Commission is there given two separate and distinct functions, the power to make appointments including transfers, and the power to exercise disciplinary control over members of the Teaching Service. However, the commencing clause, "Subject to the provisions of the Constitution", if given its plain and ordinary meaning clearly puts a limitation on the powers conferred on the Teaching Service Commission and can only mean that these powers must be exercised in a manner which is consistent and in harmony with the other provisions of the former Constitution.

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See Kanda v Federation of Malaya (1962) 2 W.L.R. 11537.

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of Appeal.

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Judgment of
Rees J.A.

29th March,
1977.

(Continued)

10 It was submitted that as the order of transfer was a punishment meted out to the appellant by the Teaching Service Commission that body was acting in a quasi-judicial capacity. Therefore, plainly in fairness and natural justice, the appellant should have been given an opportunity to make representations before the order of transfer was made but as this was not done the order was not made according to due process as required by s. 1(a) of the former Constitution. This calls for an examination of the facts of the case as set out in the appellant's affidavit. So far as material he states:

20 "The purported transfer is a punishment and was intended to be so by the Teaching Service Commission as a result of allegations of misconduct made against me by Mr. John Rampersad, the Principal of the Penal Government Primary School. The said allegations are unfounded and were never established at a proper hearing of them under Chapter VIII of the Public Service Commission Regulations, 1966 or otherwise. The said allegations were made by me to the Permanent Secretary, Ministry of Education and Culture by letter dated 10th July, 1973 concerning a number of improprieties at the Penal Government Primary School including a breakdown of discipline."

30 It will be observed from this excerpt that there is uncertainty as to the person or authority to whom the allegations of misconduct of the appellant were made. Indeed, there is no evidence that these 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 10 1973 concerning a number of improprieties, were brought to the notice of the Commission.

40 In the circumstances, I can 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. I think that the view of the learned trial judge that the order of transfer was in the nature of an administrative decision was plainly right. The letter of March 20, 1975 from the Teaching Service Commission states that the transfer was in the exigencies of the service and for my part, I can see nothing that is inconsistent with the other provisions of the former Constitution if the Commission takes the administrative step of transferring a teacher from one

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of Appeal.

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29th March,
1977.

(Continued).

school to another in accordance with the requirements of policy or expediency. It may well be that the appellant will suffer some financial loss and inconvenience from the transfer but his interest must be subordinated to the public interest for the good and welfare of the Teaching Service.

At the end of it all, I have come to the conclusion that the policy underlying s. 99C of the former Constitution is that when the Teaching Service Commission is exercising the powers vested in it by that section it must do so in a manner consistent with the other provisions of the former Constitu- 10
tion. In this case the order of transfer was intra vires the section and the courts jurisdiction to go behind that intra vires order to discover whether it was actuated by any ulterior motive or extraneous consideration is taken away by the plain and unambiguous words of s.102 of the former Constitution.

For these reasons, I would dismiss this appeal with costs.

Evan A. Rees.
Justice of Appeal.

No. 8.

FORMAL ORDER OF COURT OF APPEAL

TRINIDAD AND TOBAGO:

In the
Court of
Appeal.

IN THE COURT OF APPEAL

No. 8.

Civil Appeal No. 59 of 1975.

Between

Formal
Order of
Court of
Appeal.

KEMRAJH HARRIKISSOON Appellant/Applicant

And

29th March,
1977.

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO.

Respondent

10 Dated and Entered the 29th March, 1977.
Before The Honourables the Chief Justice
Mr. Justice C. Phillips
Mr. Justice E. Rees

UPON READING the Notice of Appeal filed on behalf of
the above-named Appellant dated the 7th day of July 1975 and
the Judgment hereinafter mentioned

AND UPON READING the Judges notes herein

AND UPON HEARING Counsel for the Appellant and Counsel
for the Respondent

20 AND MATURE DELIBERATION THEREUPON HAD

IT IS ORDERED

that this appeal be dismissed and that the Judgment of The
Honourable Mr. Justice P.L.U. Cross dated the 30th day of June
1975 be entered in favour of the Respondent be affirmed and that
the costs of this appeal be taxed and paid by the Appellant to
the Respondent.

/s/ Cross.

Assistant Registrar.

No. 9.

In the Court
of Appeal.

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO
THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL:

No. 9.

TRINIDAD AND TOBAGO:

Order
granting
Conditional
Leave to
Appeal to the
Judicial
Committee of
the Privy
Council.

IN THE COURT OF APPEAL

Civil Appeal No. 59 of 1975.

BETWEEN

KEMRAJH HARRIKISSOON

Applicant/
Appellant

AND

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO

Respondent

2nd May,
1977.

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Before the Honourable: Mr. Justice Phillips,
Mr. Justice Rees
Mr. Justice Scott.

Made the 2nd day of May, 1977
Entered the 2nd day of May, 1977.

UPON The Motion of the above named Appellant of
the 6th day of April, - - - -1977 for leave to Appeal to
the Judicial Committee of the Privy Council against the
judgment of this Court comprising the Honourable Sir Isaac
Hyatali, Chief Justice, the Honourable Mr. Justice Phillips
and the Honourable Mr. Justice Rees delivered herein on the
29th day of March, 1977.

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AND UPON READING the affidavit of Kemrajh Harri-
kissoon sworn to on the 6th day of April, 1977 and filed
herein.

AND UPON HEARING Counsel for the Appellant and
Counsel for the Respondent:

THIS COURT DOTH ORDER that subject to the perfor-
mance of the said appellant of the conditions hereinafter
mentioned and subject also to the final order of this
Honourable Court and upon due compliance with such conditions
leave to appeal to the Judicial Committee of the Privy Council
against the said judgment of this Court be and the same is
hereby granted to the Appellant:

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AND THIS COURT DOTH FURTHER ORDER that the Appellant do within six (6) weeks from the date of this Order enter into good and sufficient security to the satisfaction of the Registrar of this Court in the sum of Three Hundred Pounds with one or more sureties or deposit into Court the said sum of Three Hundred Pounds for the due prosecution of the said appeal and for the payment of all such costs as may become payable by the Appellant to the Respondent in the event of the Appellant not obtaining an Order granting him final leave to appeal or of the appeal being dismissed for non-prosecution or of the Judicial Committee of the Privy Council ordering the Appellant to pay the costs of the said Appeal:

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AND THIS COURT DOTH BY CONSENT FURTHER ORDER that the Appellant do within ninety (90) days from the date of this order in due course take out all appointments as may be necessary for settling the record in such appeal to enable the Registrar of this Court to certify that the said record has been settled and that the provisions of this order have been complied with on the part of the Appellant:

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AND THIS COURT DOTH BY CONSENT FURTHER ORDER that the Appellant upon compliance with the conditions of this order do within six (6) months of the date of this order or such other time as this Court may allow apply to this Court for final leave to appeal as aforesaid on the production of a certificate under the hand of the Registrar of this Court of due compliance on his part with the conditions of this order:

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AND THIS COURT DOTH BY CONSENT FURTHER ORDER that there be a stay of execution of the order for costs made by this Court on the 29th day of March, 1977 pending the hearing and final determination of the said appeal to the Judicial Committee of the Privy Council and that the costs of and incidental to this application be costs in the cause.

By the Court

Registrar:

In the Court
of Appeal.

No. 9.

Order
granting
Conditional
Leave to
Appeal to the
Judicial
Committee of
the Privy
Council.

2nd May,
1977.

(Continued)

In the Court
of Appeal.

No. 10.

ORDER GRANTING FINAL LEAVE TO APPEAL TO THE
JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

No. 10.

Order
Granting
Final Leave
to appeal to
the Judicial
Committee of
the Privy
Council.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Civil Appeal No. 59 of 1975.

BETWEEN

KEMRAJH HARRIKISSOON

Appellant/
Applicant

AND

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO.

Respondent

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18th June,
1977.

Before the Honourable: Mr. Justice Phillips,
Mr. Justice Corbin and
Mr. Justice Scott.

Made this 18th day of June, 1977.
Entered the 18th day of June, 1977.

UPON the Application of KEMRAJH HARRIKISSOON
preferred unto this Court by Motion on the 3rd day of June,
1977 for final leave to appeal to the Judicial Committee of
the Privy Council against the judgment of this Court dated
the 29th day of April, 1977:

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AND UPON HEARING Counsel for the Applicant and for
the Respondent and upon being satisfied that the terms and
conditions imposed by the said Order dated the 2nd day of
May, 1977 have been complied with:

THIS COURT DOETH ORDER that final leave be as is
hereby granted to the said Applicant to Appeal to the
Judicial Committee of the Privy Council.

By the Court

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Registrar: