

The Attorney General for Saint
Christopher and Nevis

Appellant

v.

Sir Probyn Inniss

Respondent

FROM
THE COURT OF APPEAL OF THE EASTERN
CARIBBEAN SUPREME COURT

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 18TH JULY 1988

Present at the Hearing:

LORD BRIDGE OF HARWICH
LORD ROSKILL
LORD GRIFFITHS
LORD ACKNER
LORD OLIVER OF AYLERTON

[Delivered by Lord Bridge of Harwich]

The primary issue in this appeal relates to the amount of pension payable by the Government of Saint Christopher and Nevis to Sir Probyn Inniss, the respondent, upon and since his retirement from the office of Governor on 26th November 1981. The facts on which that issue depends are simple. The respondent entered the civil service in Saint Christopher, Nevis and Anguilla as a clerk in 1956. In ten years he rose to the rank of Permanent Secretary in which he continued to serve until 1st August 1975, when he retired from the civil service to take up his appointment as Governor.

The Governor (Emoluments and Pensions) Act 1968 provides by section 8 that:-

"Every person who having held the office of Governor on or after the commencement of this Act ceases at any time after the commencement of this Act to be Governor shall be paid a pension under this Act with effect from the date on which he ceases to be Governor."

The annual rate of the Governor's pension, originally set at \$7,200 by section 9, has been progressively increased over the years. Section 14 of the Act provides:-

"The pensions granted under the provisions of this Act shall be in lieu of and not in addition to any pension or other benefit payable under the provisions of the Pensions Act from the Consolidated Fund of the State:

Provided however that where any person is entitled to a pension under this Act and would, but for the provisions of this section, have been entitled to a pension or other benefit payable from the Consolidated Fund of the State under the provisions of the Pensions Act, such person may opt to receive such pension or other benefit under the provisions of the Pensions Act instead of a pension under this Act:

Provided further that the receipt of a pension under this Act shall not be affected by the receipt of a pension or other benefit not payable from the Consolidated Fund of this State."

The respondent since his retirement has been paid a Governor's pension under the Act of 1968 at the appropriate rate for the time being in force. He claims, however, to be entitled to opt for a greatly enhanced pension under the Pensions Act (Cap. 195) as amended, calculated under the terms of that Act on the basis of the aggregate of his periods of service in the civil service and as Governor and by reference to the emoluments to which he was entitled immediately before his retirement as Governor. He commenced proceedings in the High Court by originating summons on 27th November 1982, seeking, *inter alia*, a suitable declaration of his entitlement. He failed before Williams J. but succeeded on appeal to the Court of Appeal of the Eastern Caribbean Supreme Court (Robotham C.J., Bishop and Byron JJ.) who granted the declaration sought. The Attorney General now appeals to Her Majesty in Council by leave of the Court of Appeal.

The Pensions Act provides by section 6:-

"No pension, gratuity or other allowance shall be granted under this Act to any officer except on his retirement from the public service in one of the following cases -

- (a) after he shall have served twenty-five years in the public service or on or after attaining the age of fifty years (whichever is the earlier)."

The respondent was under the age of fifty years on 26th November 1981. Hence, in order to sustain his claim, he had to establish that he had served twenty-five years in the public service. The main contention advanced on behalf of the Attorney General in both courts below was that he had not. It is unnecessary for their Lordships to examine the elaborate grounds on which this contention was based which are examined at length and rejected in the judgments delivered in the Court of Appeal. It is now conceded by the Attorney General that the time during which the respondent served as Governor can be aggregated with his time in the civil service to satisfy the threshold requirement imposed by section 6(a) of twenty-five years in the "public service".

It has, however, also been contended throughout, on behalf of the Attorney General, that, if the respondent is entitled to any pension under the Pensions Act, which he may opt to take in substitution for his fixed Governor's pension under the Act of 1968, the amount of that pension is to be computed by reference to the length of his relevant service as a civil servant, which is agreed to have been 224 months, and by reference to his final emoluments as a Permanent Secretary.

The computation of pensions under the Pensions Act is governed by the Regulations set out in Schedule 1 to the Act. Regulation 2 contains the following definitions:-

"... 'qualifying service' means service which may be taken into account in determining whether an officer is eligible by length of service for pension, gratuity or other allowance;

'pensionable service' means service which may be taken into account in computing pension under these Regulations;"

The relevant provisions of Regulations 4 and 19 are as follows:-

"4. Subject to the provisions of the Act and of these Regulations, every officer holding a pensionable office under the Government of the Colony, who has been in service under the Government of the Colony in a civil capacity for ten years or more, may be granted on retirement a pension at the annual rate of one six-hundredth of his pensionable emoluments for each complete month of his pensionable service.

...

19.(1) For the purpose of computing the amount of the pension or gratuity of an officer who has had a period of not less than three

years' pensionable service before his retirement -

- (a) in the case of an officer who has held the same office for a period of three years immediately preceding the date of his retirement, the full annual pensionable emoluments enjoyed by him at that date in respect of that office shall be taken ..."

In interpreting these provisions nothing turns, for the purposes of the present appeal, on the definitions in section 2(1) of the Act of "pensionable office", which includes a Governor, or of "pensionable emoluments", which includes certain allowances in addition to salary. The all important definition is that of "public service" which reads:-

"'public service' means service in a civil capacity under the Government of the Colony or the Government of any other part of Her Majesty's dominions ... and, except for the purposes of computation of pension or gratuity and of section 9, includes service as a Governor-General, Governor or High Commissioner in any part of Her Majesty's dominions, ..." (emphasis added)

It will be convenient to refer to the words emphasised in this definition as "the exception clause".

It is plain that this definition constrains the concession, very properly made before the Board, that the respondent can rely on his service as Governor as part of his twenty-five years in the "public service" for the purpose of entitlement to pension under section 6(a). But it appears to their Lordships equally plain that the exception clause in terms requires that, in applying the formula prescribed by Regulation 4 to compute the amount of the pension which the respondent might opt to receive under the Act by reference to his "pensionable service", as defined, his period of service as Governor must be excluded. It may be that this point received insufficient attention in argument and in the judgments of the Court of Appeal because of the disproportionate attention paid to the point under section 6(a). The decision of the Court of Appeal in the respondent's favour on this point appears to rest on the proposition that to give effect to the exception clause according to its terms would in some way frustrate the intention of the legislature, as expressed in section 14 of the Act of 1968, in conferring an option upon the Governor to receive a pension under the Pensions Act instead of a pension under the Act of 1968. With respect, their Lordships are quite unable to agree. There is nothing in the

Act of 1968 which can affect the construction of the Pensions Act, still less operate as an implied repeal of the clear and unambiguous terms of the exception clause. Counsel for the respondent, while in no way disclaiming the Court of Appeal's approach to this point, did not rely in support of his argument on any specific passage from the judgments delivered, which may perhaps excuse their Lordships from examining those judgments in any further detail.

The principal argument advanced before the Board for the respondent is that, in the circumstances of this case, the exception clause is effectively overridden by the terms of Regulation 19(1)(a) in Schedule 1. The respondent, it is submitted, did not retire until 1981 when he relinquished the office of Governor; accordingly the relevant "pensionable emoluments" to which the formula prescribed by Regulation 4 must be applied, are the emoluments enjoyed by him as Governor at that date and it must follow, so it is said, that the whole period of his public service up to the date of retirement is to be taken into account in computing his pension. The short answer to this submission is that, in the light of the definition of "pensionable service" in the Regulations, "retirement" in Regulation 19(1)(a) can only mean retirement from pensionable service as so defined. The respondent retired from pensionable service as a Permanent Secretary to take up his appointment as Governor on 1st August 1975, as his own letter to the then Acting Governor dated 31st July 1975 confirms.

Their Lordships have no hesitation in concluding that the pension which the respondent was entitled to opt to receive under the Pensions Act is to be computed by reference to his 224 months of service as a civil servant and by applying the formula prescribed by Regulation 4 to the appropriate pensionable emoluments, as defined in the Act, of a Permanent Secretary. It is common ground that civil service pensions in Saint Christopher and Nevis have at all material times been raised in step with salaries and allowances. Accordingly it is accepted by the Attorney General that the amount of the pension under the Pensions Act which the respondent was entitled to opt to receive in November 1981 is to be calculated by reference to the pensionable emoluments at that date of a Permanent Secretary in the same grade as that of the respondent in July 1975. On the figures put before the Board on behalf of the Attorney General it would appear that a pension so computed and thereafter adjusted by reference to any relevant increases in respect of the period since the date that the respondent retired as Governor would be less than the amount of the pension under the Act 1968 in respect of the same period. Those figures, however, were not agreed and the

respondent wished to reserve his position as to the exercise of his option, a course which the Attorney General did not oppose. In the event of the Board rejecting the respondent's arguments on this point it was common ground that the respondent would be entitled to a declaration of his right in the following terms:-

"That the plaintiff was entitled to opt to be paid a gratuity and pension with effect from 27th November 1981 under and by virtue of the Pensions Act, (Cap. 195) as amended, in respect of 224 complete months' service in a pensionable office in the public service of the State of Saint Christopher and Nevis and that the relevant pensionable emoluments in the event of such option being exercised would have been those of a Permanent Secretary as at that date."

A second and distinct issue arises in the following circumstances. The respondent, when he retired from the civil service in 1975, was entitled to six months' paid leave which he had never taken. Under his terms of service he was entitled to a money payment in lieu of the paid leave calculated by reference to his salary as a Permanent Secretary. The respondent's terms of service as Governor contained no provision for paid leave. In his letter to the Acting Governor dated 31st July 1975 to which reference has already been made the respondent wrote:-

"There is a passage grant, and leave amounting to six months to my credit, but in the circumstances, these may have to remain frozen."

No issue arises with respect to any "passage grant", but in this litigation the respondent has claimed that on his retirement as Governor in 1981, by virtue of the "freezing" of his previous leave entitlement, the money payment in lieu of leave falls to be calculated by reference to his salary as Governor and the Court of Appeal has so held. Again their Lordships cannot agree. The basis of this claim is contractual and the only relevant contract is that which governed the respondent's terms of service as a Permanent Secretary. It must follow that the money payment is to be calculated by reference to his salary as Permanent Secretary not as Governor.

Accordingly their Lordships will humbly advise Her Majesty that the appeal should be allowed, the order of the Court of Appeal set aside and a declaration in the terms indicated earlier in this judgment substituted therefor. The respondent must pay the appellant's costs of the appeal to the Board, but there will be no order for costs in either of the courts below.

