

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2021/1033

IN THE MATTER OF A CLAIM FOR JUDICIAL REVIEW UNDER PART 56 OF THE CIVIL PROCEDURE RULES 2000 (As Amended) PURSUANT TO LEAVE GRANTED BY THE HONOURABLE JUSTICE ESCO HENRY BY ORDER DATED 10th MARCH 2022

AND

IN THE MATTER OF REGULATIONS 8(1) and 8(2) OF THE PUBLIC HEALTH (PUBLIC BODIES SPECIAL MEASURES) RULES 2021

AND

IN THE MATTER OF THE DECISION OF THE PUBLIC SERVICE COMMISSION TO TERMINATE THE EMPLOYMENT OF THE 1st, 2nd, 3rd and 4th CLAIMANTS WITHOUT AN OPPORTUNITY TO BE HEARD HAVING DEEMED THE SAID CLAIMANTS TO HAVE ABANDONED THEIR POST AND THEREBY RESIGNED FROM THEIR RESPECTIVE POSTS

AND

IN THE MATTER OF THE DECISION OF THE POLICE SERVICE COMMISSION TO TERMINATE THE EMPLOYMENT OF THE 5th CLAIMANT WITHOUT AN OPPORTUNITY TO BE HEARD HAVING DEEMED THE SAID CLAIMANT TO HAVE ABANDONED HIS POST AND THEREBY RESIGNED

IN THE MATTER OF THE DECISION OF THE COMMISSIONER OF POLICE TO TERMINATE THE EMPLOYMENT OF THE 6th CLAIMANT WITHOUT AN OPPORTUNITY TO BE HEARD HAVING DEEMED THE SAID CLAIMANT TO HAVE ABANDONED HER POST AND THEREBY RESIGNED

AND

IN THE MATTER OF SECTIONS 1, 5, 6, 8, 16, 17, 37, 38, 77,78, 84, 96 and section 101 OF THE CONSTITUTION OF SAINT VINCENT AND THE GRENADINES

AND

IN THE MATTER OF COVID-19 (MISCELLANEOUS AMENDMENTS) ACT NO. 5 OF 2020 and SRO NO. 32 OF 2021 ENTITLED THE COVID-19 (MISCELLANEOUS AMENDMENTS) ORDER 2021

BETWEEN

SHANILE HOWE	1 st CLAIMANT
NOVITA ROBERTS	2 nd CLAIMANT
CAVET THOMAS	3 rd CLAIMANT
ALFONZO LYTTLE	4 th CLAIMANT
BRENTON SMITH	5 th CLAIMANT
SYLVORNE OLLIVER	6 th CLAIMANT

AND

THE MINISTER OF HEALTH AND THE ENVIRONMENT

1st DEFENDANT

THE PUBLIC SERVICE COMMISSION

2nd DEFENDANT

THE COMMISSIONER OF POLICE

3rd DEFENDANT

ATTORNEY GENERAL

4th DEFENDANT

POLICE SERVICE COMMISSION

5th DEFENDANT

CONSOLIDATED WITH

SVGHCV2022/0053

IN THE MATTER OF A CLAIM FOR JUDICIAL REVIEW UNDER PART 56 OF THE CIVIL PROCEDURE RULES 2000 (As Amended) PURSUANT TO LEAVE GRANTED BY THE HONOURABLE JUSTICE ESCO

HENRY BY ORDER DATED 8th JUNE 2022

AND

IN THE MATTER OF REGULATIONS 8(1) and 8(2) OF THE PUBLIC HEALTH (PUBLIC BODIES SPECIAL MEASURES) RULES 2021

AND

IN THE MATTER OF THE DECISION OF THE PUBLIC SERVICE COMMISSION TO TERMINATE THE EMPLOYMENT OF THE 1st – 265th CLAIMANTS WITHOUT AN OPPORTUNITY TO BE HEARD HAVING DEEMED THE SAID CLAIMANTS TO HAVE ABANDONED THEIR POST AND THEREBY RESIGNED FROM THEIR RESPECTIVE POSTS

AND

IN THE MATTER OF THE DECISION OF THE COMMISSIONER OF POLICE TO TERMINATE THE EMPLOYMENT OF THE 257th – 265th CLAIMANTS WITHOUT AN OPPORTUNITY TO BE HEARD HAVING DEEMED THE SAID CLAIMANTS TO HAVE ABANDONED THEIR POST AND THEREBY RESIGNED

AND

IN THE MATTER OF SECTIONS 1, 5, 6, 8, 16, 17, 37, 38, 77,78, 84, 88, 96 and section 101 OF THE CONSTITUTION OF SAINT VINCENT AND THE GRENADINES

AND

IN THE MATTER OF COVID-19 (MISCELLANEOUS AMENDMENTS) ACT NO. 5 OF 2020 and SRO NO. 32 OF 2021 ENTITLED THE COVID-19 (MISCELLANEOUS AMENDMENTS) ORDER 2021

BETWEEN:

SHEFFLORN BALLANTYNE

(in his representative capacity pursuant to Court order dated 8th June 2022)

1st CLAIMANT

TRAVIS CUMBERBATCH

(in his representative capacity pursuant to Court order dated 8th June 2022)

2nd CLAIMANT

ROHAN GILES

(in his representative capacity pursuant to Court order dated 8th June 2022)

3rd CLAIMANT

AND

THE MINISTER OF HEALTH AND THE ENVIRONMENT

1st DEFENDANT

THE PUBLIC SERVICE COMMISSION

2nd DEFENDANT

THE COMMISSIONER OF POLICE

3rd DEFENDANT

ATTORNEY GENERAL

4th DEFENDANT

Before: The Hon. Mde. Justice Esco L. Henry High Court Judge

Appearances:

Ms. Cara Shillingford-Marsh with her Mr. Jomo Thomas and Ms. Shirlan Barnwell for the claimants/applicants in both claims

Mr. Anthony Astaphan SC, with him Solicitor General Ms. Karen Duncan and Mrs. Cerepha Harper-Joseph for the 1st, 3rd and 4th defendants/respondents in both claims.

Mr. Grahame Bollers for the 2nd defendants/ respondents in both claims and the 5th defendant/respondent in claim SVGHCV2021/1033.

2022: Nov. 29

Dec. 1

2023: Mar. 13

DISPOSITION

1. In relation to the consolidated claims, it is hereby declared that:

- (a) Rules 8(1) and 8(2) of the **Special Measures Rules** are unlawful, unconstitutional, ultra vires, disproportionate and tainted by procedural impropriety.
- (b) the Minister's decision by Rule 8 of the **Special Measures Rules** to deem the public officer-Claimants to have resigned their offices pursuant to Regulation 31 of the PS Regulations, without affording them an opportunity to be heard, constitutes a breach of

natural justice, contravenes section 8(8) of the **Constitution**, is unlawful, procedurally improper and void.

- (c) the PSC's decision to deem the public officer-Claimants to have resigned their offices pursuant to Regulation 31 of the PS Regulations and ceased to be public officers by operation of law under regulation 8 of the **Special Measures SR&O**, is unlawful and disproportionate.
- (d) the COP's decision to deem the Claimants who are police officers below the rank of Sergeant to have resigned their offices pursuant to Section 73A of the **Police Act** and by operation of law under regulation 8 of the **Special Measures SR&O** is unconstitutional and ultra vires.
- (e) the COP's decision to deem the Claimants who are police officers below the rank of Sergeant to have resigned their offices pursuant to Section 73A of the **Police Act** and by operation of law under regulation 8 of the **Special Measures SR&O**, without affording them an opportunity to be heard, constitutes a breach of natural justice, contravenes section 8(8) of the Constitution, is unlawful, procedurally improper and void.
- (f) **The Special Measures Rules, 2021 - SR&O No. 28 of 2021** made pursuant to the purported power of the Minister under section 43B of the **Public Health Act** is unlawful, unconstitutional and void.
- (g) **The Special Measures Rules, 2021 - SRO 28 of 2021** to the extent that it has the effect of providing for deprivation of any of the Claimants' accrued pension benefits or rights under their contracts of employment, infringes their rights to protection from deprivation of property without compensation under section 6 of the **Constitution** and is therefore void.
- (h) Rule 8 (1), (2) and (3) of **SRO 28 of 2021** were made in violation of sections 77 and 78 of the **Constitution** and are void.
- (i) The **COVID-19 (Miscellaneous Amendments) Act No. 5 of 2020** insofar as it empowers the Minister to amend any existing law by making an Order violates section 37 of the

Constitution and the constitutional doctrine of separation of powers, is unconstitutional and void.

- (j) Section 73A of the **Police Act** made by the Prime Minister and Minister of National Security purportedly pursuant to the power under section 2(2) of the **COVID-19 (Miscellaneous Amendments) Act 2020** is unlawful and void.

2. In relation to claim SVGHCV2021/1033, it is declared that:

- (a) the Police SC's decisions to deem the 5th Claimant to have resigned his office and ceased to be a police officer pursuant to section 73A of the **Police Act**, by operation of law under regulation 8 of the **Special Measures SR&O** is unlawful and disproportionate.
- (b) the Police SC's decision to deem the 5th Claimant to have resigned his office pursuant to Section 73A of the **Police Act** and by operation of law under regulation 8 of the **Special Measures SR&O**, without affording him an opportunity to be heard, constitutes a breach of natural justice, contravenes section 8(8) of the **Constitution**, is unlawful, procedurally improper, and void.

3. No declaration is made that: -

- (a) section 43B of the **Public Health Act** insofar as it grants power to the Minister to declare a public health emergency, is inconsistent with section 17 of the **Constitution** or is null and void.
- (b) **SR&O No. 38 of 2020** cited as the **Public Health Emergency (Declaration) Notice 2020** made under section 43B of the **Public Health Act**, is inconsistent with section 17 of the **Constitution** or is null and void.
- (c) **SRO 28 of 2021** insofar as it purports to make the taking of the Covid-19 vaccine mandatory on pain of suffering the loss of livelihood, loss of pension rights and being exposed to criminal sanctions amounts to inhumane and degrading treatment of the Claimants, is contrary to section 5 of the **Constitution** or is void.
- (d) the **COVID-19 (Miscellaneous Amendments) Act 2020** insofar as it fails to define 'the Minister' is ambiguous, vague, contravenes the constitutional rule of law doctrine or is void.

(e) 'the Minister' within the meaning of section 2(2) of the **COVID-19 (Miscellaneous Amendments) Act 2020** means the 'Minister of Health'.

(f) **The Special Measures Rules, 2021 - SRO 28 of 2021** contravenes section 88 of the **Constitution**.

4. An order of certiorari is issued in the consolidated claims to quash:

(a) the Minister's decision to make Regulations 8 (1) and 8 (2) of the **Special Measures SR&O**.

(b) the PSC's decision to deem the Claimants who are public officers to have resigned their offices by operation of law under the **Special Measures SR&O** and to cease to be public officers in accordance with Regulation 31 of the PS Regulations.

(c) the COP's decision to deem the Claimants who are police officers below the rank of Sergeant to have resigned their offices by operation of law under section 73A of the **Police Act** and to cease to be a members of the Royal St. Vincent and the Grenadines Police Force.

5. An order of certiorari is issued in claim SVGHCV2021/1033 to quash the Police SC's decision to deem the 5th Claimant to have resigned his office by operation of law under the **Special Measures SR&O** and to cease to be a police officer pursuant to Section 73A of the **Police Act**.

6. It is further declared that:

(a) none of the claimants ceased to be entitled to hold the respective offices of public officers¹ or police officers within the relevant Ministries, Departments or the Royal Saint Vincent and the Grenadines Police Force to which they were appointed respectively by the PSC, the Police SC and the COP, and held at the relevant times. They remain entitled to hold those respective offices.

(b) The claimants are entitled to their full pay and all benefits due and payable to them in their respective capacities as public officers or police officers inclusive of any accrued pension and gratuity benefits or rights from the respective dates on which they were deemed to have resigned.

¹ Be it as a teacher, customs officer or otherwise.

7. The Crown is liable to each claimant for damages for the referenced constitutional breaches inclusive of an additional award to reflect the seriousness of the breaches and deter any recurrence, with interest at the statutory rate of 6% per annum.
8. The claimants must file and serve their application for assessment of damages within 3 months of today's date, i.e. on or before June 14th 2023.
9. The PSC, the Police SC, the COP and the Honourable Attorney General are directed to make the necessary arrangements for the respective claimants to receive all payments and benefits to which they are or may become entitled or that may be awarded to them arising from any subsequent assessment of damages.
10. The defendants shall pay to the claimants costs pursuant to rule 56.13 of the CPR to be assessed if not agreed. The claimants are required to file the application for assessment of costs within 45 days of today's date, i.e. on or before 28th April 2023.

By the Court



REGISTRAR'S OFFICE
ST. VINCENT AND THE GRENADINES
Registrar