

SUPREME COURT OF QUEENSLAND

File No S 8044. of 2002
& 8046/02
[2002] QSC 371

BETWEEN:

CHRISTOPHER RAYMOND SMITH

First Applicant

AND:

COMMISSIONER OF QUEENSLAND POLICE SERVICE AND ANOR

First Respondent

HEARD WITH:

MARK WILLIAM BIOLETTI

First Applicant

AND:

COMMISSIONER OF QUEENSLAND POLICE SERVICE AND ANOR

First Respondent

MOYNIHAN J – REASONS FOR JUDGMENT

DELIVERED ON: 1 November 2002

HEARING DATE/S: 10 September 2002

ORDER:

Application Dismissed

CATCHWORDS:

ADMINISTRATIVE LAW – JUDICIAL REVIEW – where the applicants have applied for a statutory order of review pursuant to the *Judicial Review Act 1991* on the grounds that the rules of natural justice or procedural fairness were not applied – where each of the applicants were suspended pursuant to s6.1(1)(a)(ii) of the *Police Service Administration Act 1990* on the ground that he was liable for disciplinary action – where it was determined that their salary and allowances cease after the suspension had been in effect for 14 days – where each of the applicants now applies by way of interim relief to have the decision that they cease to be paid salary and allowances after 14 days be stayed pending the determination of this substantive application – where respondent has brought

cross applications that the application for statutory orders or review be dismissed pursuant to s13 of the *Judicial Review Act 1991*.

Police Service Administration Act 1990 s6.1(1)(a)(ii), 6.3(2), 6.4, 9.2, 9.3, 9.4

Judicial Review Act 1990, s13

Police Service (Review of Decisions) Regulation 1990, r3,r8

Stubberfield v Webster 1996 2 QdR 211

Turner v Valuer's Registration Committee of Queensland (2000) QSC 94

COUNSEL: Mr D. O’Gorman for the applicants
Mr P.J. Flanagan for the respondents

SOLICITORS: Gilshenin & Lutton for the applicants
Q.P.S Solicitor for the Respondents

[1] These applications, although separate, can conveniently be disposed of together since they give rise to essentially the same legal issues.

[2] The applicants are police officers. Each was suspended pursuant to s 6.1(1)(a)(ii) of the *Police Service Administration Act 1990* on the ground that he was liable for disciplinary action and it was determined that his salary and allowances cease after the suspension had been in effect for 14 days.

- [3] It may be noted that pursuant to ss 6.3(2) and 6.4 of the *Police Service Administration Act* 1990 a suspended officer may receive remuneration from any lawful source during the period of suspension but it is relieved of the powers and duties of a constable at common law or under any Act or law.
- [4] The applicants have applied for a statutory order of review pursuant to the *Judicial Review Act* 1991 essentially on the ground that the rules of natural justice or procedural fairness were not applied.
- [5] Each of the applicants now applies in the originating proceeding for judicial review by way of interim relief to have decision that they cease to be paid salary and allowances after 14 days be stayed pending the determination of this substantive application.
- [6] The respondent has brought cross applications that the application for statutory orders of review be dismissed pursuant to s 13 of the *Judicial Review Act* 1991.
- [7] It is convenient to deal first with the respondent's application for the dismissal of the substantive application for statutory review.

- [8] Section 13 of the *Judicial Review Act* provides to the effect that if an applicant is entitled to seek a review by another “court or tribunal authority or person” under a law other than *Judicial Review Act* the court “must dismiss the application if it is satisfied, having regard to the interests of justice, that it should do so”.
- [9] The notices of suspending the applicants were issued pursuant to s 6.1(1)(a)(ii) of the *Police Service Administration Act* and the decisions complained of are reviewable pursuant to part 9 of the *Police Service Administration Act*. The applicants were so informed by the notice they were given.
- [10] S 9.2 of the *Police Service Administration Act* provides that an application for review does not affect the operation and effect the decision pending disposal of the application for review.
- [11] Section 9.3(c) of the *Police Service Administration Act* provides a review of a decision “about” the suspension of an officer. “About” in my view is to be construed to connote something “in connection with” the decision to suspend and has the consequence that both the suspension from office and the suspension of

salary and allowance are reviewable.

[12] Section 9.4(1) of the *Police Service Administration Act* provides that an application for review must be made as prescribed by the Regulation and Service Administration (Review of Decisions). Regulation 6A(2) provides that the application is to be made within 14 days after the officer receives written notice of the decision.

[13] The person who conducts the review is a Commissioner Police Service Review and provision is made for the nomination by the Chairperson of the Crime & Misconduct Commission of a suitable person to conduct the review.

[14] Section 9.3(3) requires a Commissioner for Police Service Reviews to:

- “(a) hear and consider all applications for review under part 9 duly made; and
- (b) to make recommendations relating to any matters relevant to review under part 9.”

[15] Section 9.4 provides for the procedures to be adopted and the conduct of a review and the *Police Service (Review of Decisions) Regulation 1990* prescribes that procedures to be conducted in the conduct of a review.

[16] Regulation 3 states that the objects include:

- “... provide for the access of officers to an independent review of decisions to the address of certain grievances;

- to ensure that decisions made in relation to officers are fair, just and compassionate and are made in accordance with sound personnel management practices; and with due regard had to the efficiency, effectiveness and professionalism of the Police Service”.

[17] Section 8 of the Regulation deals with the functions of a Review Commissioner in these terms:

“to conduct a review of all material provided by the parties to the review and relevant to the case at the time the case is decided, whether or not it was submitted for the consideration of the person making the decision under review; to hear such submissions at such places as the review commissioner considers necessary; make such recommendations to the commissioner as the review commissioner thinks fit in respect of the case”. Under a review commissioner making a recommendation the commissioner is to have regard to it, consider or reconsider the matter in relation to the decision under review.

[18] A Review Commissioner is not bound by the rules of practice, or evidence and may be informed on any matter that the Review Commissioner considers relevant to the review in any manner the Review Commissioner thinks fit.

[19] By s 13 of the Act a Review Commissioner having completed a review shall give a written advice to the parties to the review:

- “(a) affirming the decision and review;
- (b) making a recommendation the commissioner in relation to the decision under the review or in relation to any matters arising there from; or
- (c) informing them that pursuant to Regulation 12 ... and shall give a brief summary of the reasons for the decision”.

[20] Section 9.5 of the Act provides as to the outcome of reviews that the Commissioner for Police Service Review:

“...is to make such recommendations as that Commissioner considers appropriate to the matter under review to the Commissioner of the police service.

(2) The Commissioner of the Police Service, upon consideration of the matter reviewed and having regard to the recommendations made, is to take such action as appears... be just and fair.”

[21] The affect of the statutory scheme constituted by the *Police Service Administration Act* and the review of decision regulations in my view is to provide for a review of the decision suspending the applicants by another authority or person in terms of s 13 of the *Judicial Review Act*. Given the provision in regulations 3 and 8 that the Review Commissioner is not bound by the rules of practice or evidence and may be informed of any matter the Review Commissioner considers relevant and the provisions of 9.5 of the Act the review procedure is sufficiently wide to deal with any complaint the applicants might have about failure to accord procedural fairness or natural justice. The provisions of s 13(b) of the *Judicial Review Act* are therefore satisfied and the application must be dismissed if the Court is satisfied at having regard to the interest of justice it should do so. This consideration was adverted to by Thomas J in *Stubberfield v Webster* 1996 2 QdR 211 and by Holmes J in *Turner v Valuer's Registration Committee of Queensland* (2000) QSC 94.

[22] The circumstances being those I have outlined and the conditions of s 13(b) of the *Judicial Review Act* having been satisfied no sufficient reason having regard to the interest of justice has been shown for the requisite dismissal of the application not being effected. I therefore dismiss the applications for Judicial Review.