IN THE SUPERIOR COURT OF JUDICATURE

IN THE SUPREME COURT

ACCRA, A.D.2017

CORAM: ATUGUBA, JSC (PRESIDING)

DOTSE, JSC

BAFFOE-BONNIE, JSC

BENIN, JSC

PWAMANG, JSC

CIVIL APPEAL
NO. J4/38/2016

22ND NOVEMBER, 2017

CASTRO DANIEL YAO AHIAMO ..... PLAINTIFFF/APPELLANT/APPELLANT

VRS

1. THE ATTORNEY-GENERAL

2. THE INSPECTOR-GENERAL OF POLICE

3. CENTRAL DISCIPLINARY BOARD ..... DEFENDANTS/RESPONDENTS/ RESPONDENTS

JUDGMENT

BENIN, JSC:-

There is just one issue raised in this appeal which has been brought by the plaintiff/ appellant/appellant, called the plaintiff in whose favour the Court of Appeal gave judgment. Effectively, the appeal is against the consequential orders made by the said court whereby it refused to order the re-instatement of the plaintiff as well as his claim for arrears of salary, even after it had nullified his dismissal from the Police Service. The plaintiff was a serving policeman when he was charged with breach of the police

regulations. It is not necessary to recount all the details of the infractions of the regulations the appellant was charged with. It suffices to mention that following some sort of inquiry the appellant's appointment was terminated by the Central Disciplinary Board, the 3rd defendant/respondent/respondent, called the 3rd defendant. The plaintiff appealed to the Inspector General of Police, the 2nd defendant/respondent/ respondent, called the 2nd defendant as well as the Police Council but neither of them even acknowledged receipt of his appeal or petition. His complaint was that the dismissal did not follow due process and should thus be reviewed. When his appeals hit a stone wall, the plaintiff mounted an action at the High Court against the Attorney-General, the 1st defendant/respondent/respondent, called the 1st defendant and also against the 2nd and 3rd defendants. The plaintiff sought these reliefs:

a. A declaration that the Central Disciplinary Board acted ultra vires when it took the decision to dismiss and did dismiss (the plaintiff) from the Ghana Police Service via its letter dated 22nd July, 2008.

b. An order reinstating (the plaintiff) into the Ghana Police Service with no loss of seniority.

c. An order for the payment of the salary and other benefits of (the plaintiff) from the date of stoppage of his salary (I.e. 1st February 2008) to the date of his reinstatement inclusive of all upward adjustments in salary to the rank he would have been promoted to had he not been so dismissed from the service.

d. Special damages equivalent to two years annual gross salary to be assessed per the rank of his reinstatement.

e. General damages; and

f. Costs on a full indemnity basis, inclusive of lawyers' professional fees.

The trial court dismissed the plaintiff's claim. The Court of Appeal reversed that decision, reasoning that the 3rd defendant acted beyond its jurisdiction in dismissing the plaintiff. Indeed the prevailing Police Service regulations and decided authorities cited by the Court of Appeal justified its decision to declare the plaintiff's dismissal wrongful. Consequently, the court below quashed his dismissal. Thus far, none of the parties has any issues with the court's decision. It is the consequential orders made by the court which the plaintiff is dissatisfied with. The court granted the first relief set out above. On the second relief for reinstatement, the court below opined that the plaintiff was given a fair hearing, but it was the 3rd defendant's intervention that has resulted in the punishment imposed on the plaintiff being declared unlawful. The court took note of the fact that the plaintiff admitted having committed some infraction of the regulations

and pleaded for leniency. The court concluded thus: "It appears to us that an order reinstating the appellant will undermine discipline within the Police Service and we therefore decline to make an order reinstating appellant." The Court also awarded him some damages. We shall deal with this shortly.

The plaintiff filed a notice of appeal complaining about two matters namely (1) the refusal by the court to order his reinstatement; (2) the refusal or failure of the court to order the payment of arrears of his salary and benefits. These reliefs were founded on the following grounds of appeal:

1. The court erred in declining to make orders reinstating the appellant even though it found his dismissal by the Central Disciplinary Board ultra vires its powers.
2. The imposition of the sanction of dismissal was harsh having regard to the evidence on record.
3. The court erred in failing to order for the payment of arrears of salary and other benefits of the appellant by the Ghana Police Service from February 2008 till date of judgment.

On the question of reinstatement counsel for the appellant reviewed all the facts in evidence and the Court of Appeal's decision upholding relief 1 endorsed on the writ. Counsel submitted that the Court of Appeal should have ordered the plaintiff's reinstatement. This position was virtually supported by counsel for the defendants, who added that the plaintiff will revert to his position but will remain on interdiction. For this proposition, counsel for the defendants cited this court's decision in Republic v. Fast Track High Court, Accra; ex parte Sian Goldfields Ltd. (Aurex Management & Investment AG/SA Ltd Interested Party) (2009) SCGLR 204, where it was held that where proceedings are set aside by an appellate court as a nullity, the nullity does not affect the writ that commenced the proceedings, unless otherwise decided by the court. The analogy is far-fetched in the sense that in disciplinary proceedings which are declared null and void, nothing remains of it, the nullity applies to the entire proceedings. However, if the affected official is reinstated the process may be started de novo, unless time has ran out by legislation.

Let us now deal with the substance of this ground of appeal. Unfortunately neither counsel cited any authority for the common position they have taken. May be they assume it's trite learning that every declaration that termination of appointment is wrongful must be accompanied by an order of reinstatement. That is clearly a wrongful assumption, nor is it trite learning. For a reading through the decided authorities in this country does not portray a common position on this vexed question. On one side there

are cases like Sallah v. Attorney-General, Supreme Court, 20 April 1970, unreported, digested in (1970) CC 55; Quayson v. Attorney-General (1981) GLR 295, C.A.; Kwapong and Another v. Ghana Cocoa Marketing Board and Others etc (Consolidated) (1984-86) 1 GLR 74, which seem to decide that once the dismissal was wrongful in terms of a statute, including the Constitution, reinstatement should be ordered. We remember in the Sallah case, that decision led the then Prime Minister to go on air to proclaim no court could compel the Government to employ anybody.

On the other side are cases like Atoongo v. Bolgatanga Urban Council, Court of Appeal, 23 February 1970, unreported; digested in (1970) CC 39; Bank of Ghana v. Nyarko (1973) 2 GLR 265, C.A.; Ghana Cocoa Marketing Board v. Agbettoh and Others (1984-86) 1 GLR 122, where reinstatement was not ordered for a variety of reasons, even though in a case like GCMB v. Agbettoh, the dismissal was in violation of a constitutional provision.

We proceed to examine in detail the case of Quayson v. Attorney-General, supra, called Quayson's case as well as the GCMB v. Agbettoh, supra, called Agbettoh's case where clear divergent opinions were delivered by the Court of Appeal applying the equivalent provisions of the 1969 and 1979 Constitutions. We shall also make some detailed reference to the Atoongo case, supra. In Quayson's case, the plaintiff was removed from office as the Deputy Director of Prisons following the Government White Paper on the findings of a commission of inquiry. He appealed to the Court of Appeal which determined that his removal from office was unlawful, in terms of article 155(b) of the 1979 Constitution. That provision read: **"No member of the public services shall be……(b) dismissed or removed from office or reduced in rank or otherwise punished without just cause."** The Court of Appeal reasoned at page 299 per Edusei J. A. who read the opinion of the court that: "This provision in the Constitution would be meaningless if a public officer could not be restored to his former post where a court finds that his removal was capricious and unjust. We will therefore in the circumstances of this case order reinstatement of the appellant to his former office as first Deputy Director of the Ghana Prisons Service."

It is observed from this decision that the court did not emphatically state that reinstatement must follow a declaration of wrongful dismissal under the Constitution, that was why it took the circumstances into account in making the order for reinstatement. But a decision by the same court and courts below to order reinstatement would be justified in the light of this decision.

On the other hand, in the Agbettoh case, supra, the court held that the termination of

the employees was contrary to the provisions of article 138(b) of the 1969 Constitution. That provision read: **"No member of the public service shall be……dismissed or removed from office or reduced in rank or otherwise punished without just cause."** It is observed that article 155(b) of the 1979 Constitution which was relied upon by the court in Quayson's case, supra, was a verbatim reproduction of article 138(b) of the 1969 Constitution which was relied upon by the same court in declaring the termination of the appointment of the respondents in the Agbettoh case as unlawful, null and void. But in Agbettoh's case the court, whilst acknowledging that in principle it could order re-instatement, refused to order same because apart from the plaintiffs not having asked for that, which was not a hindrance anyway, the court's reasoning showed they were concerned with the time lapse of five years for which the respondents had done no work for the employer. Consequently it refused to grant an injunction restraining the GCMB from ejecting them from their official residence. The reason proffered by the Court per Apaloo CJ who delivered the opinion of the court at page 131 of the report is this: **"……It would be unreal to assume that the status quo in 1979 still exists five years afterwards in 1984,…..Clearly, the plaintiffs have not worked for the board all these years. They themselves were under a duty to minimise their losses by seeking and obtaining alternative jobs…….To affirm today an order which secures bungalows which they only used when they were in the actual service of the board or to order that salaries be paid to them for those years when they did not work for the board, albeit through no fault of their own, would be to set our face against realities. The reality of the situation is that although de jure they are still technically in the service of the board, de facto they have ceased to be so since November 1979."**

This decision was rendered on 8 November 1984, almost five years to the date of their dismissal from office. It is observed from this decision that the consequential orders were dictated by the circumstances of the case. No hard and fast prescriptions were laid down. The result is that if the court concludes that termination of appointment of a person is unlawful as same violates a constitutional or statutory provision, it may order re-instatement if the circumstances so warrant it, or alternatively or in addition it may award damages. There is no automatic right to be reinstated. Hence in the Atoongo case, supra the court refused to order re-instatement. The appellant in that case was employed as the registrar of the then Bolgatanga Local Council, the predecessor-in-title of the respondent. The appellant was interdicted following his involvement in a criminal

case. He was eventually acquitted by a court, but his appointment was terminated by his employers. He took an action to recover arrears of salary, declaration that his dismissal was ultra vires the respondent's power, and a declaration that he was still at post. The Court of Appeal relied on the Privy Council decision in the case of Francis v. Municipal Councillors of Kuala Lumpur (1962) 3 All E. R. 633, P.C. and held that the proper remedy was by way of damages.

Going forward, we must refer to this court's endorsement of the reasoning in the Agbettoh case in the case of Nartey-Tokoli and Others v. Volta Aluminium Co Ltd (1989-90) 2 GLR 341 called the Valco case, at pages 371-372, per Taylor JSC, whose judgment was concurred in by three other justices of the court.

In respect of the case on hand the Court has concluded that the termination was ultra vires the power of the 3rd defendant under the Police Force (Disciplinary Proceedings) Regulations, 1974 (L.I. 993). The relevant provisions of these regulations had been judicially applied in cases like Republic v. Inspector General of Police; ex parte Lamptey (1978) GLR 62 and Republic v. Inspector General of Police; ex parte Cantara; these cases were relied upon by the court below. The parties herein have no problem with that, neither do we. But we will go further to hold that the plaintiff's termination was in breach of the provisions of article 191(b) of the Constitution, 1992 which state thus: **"A member of the public services shall not be- (b) dismissed or removed from office or reduced in rank without just cause."**

This provision is a verbatim reproduction of article 138(b) of the 1969 Constitution, supra, as well as article 155(b) of the 1979 Constitution, supra. The expression "without just cause" connotes both substantive and procedural due process.

The Court of Appeal refused to order re-instatement of the plaintiff for reasons quoted above. In view of the existing authorities, it is clear the lower court was at liberty to choose which way to go. It had discretion in the matter as existing authorities were decided on equivalent provisions of the 1969 and 1979 Constitutions, and the present case comes under similar provision in article 191(b) of the 1992 Constitution. Thus unless we have reason to interfere with the decision of the court below in refusing the claim by the plaintiff to be reinstated we ought to leave that decision to stand. For the practice as summed by this court again per Taylor JSC in the Valco case at page 371 is that "....the well-known practice in the conduct of appeals is that where a judge has used his discretion in arriving at a decision, then unless it can be demonstrated that he ignored the law or took into consideration facts that he ought to have excluded or omitted material facts which should have been considered, his conclusion should not be

interfered with." The Court reasoned that since the plaintiff had accepted some blame and was pleading for leniency, re-admitting him into the service would compromise discipline, as the disciplinary measure taken against him was only reversed on procedural grounds. Much as the court below was entitled to its opinion in the exercise of discretion, we consider that analogous situation in the Agbettoh case is much more germane to apply. Three months from now, the plaintiff would have been away from the service for ten years. Much as we deprecate the capricious manner the plaintiff was removed from office, we consider it inadvisable to restore him to the police service. He himself did not help his cause by waiting for more than five years when the cause of action arose before commencing the action in court. It did not show the desire of a service personnel who wants to return to post, knowing the physical demands required on the job. We have no reason to interfere with the Court of Appeal's refusal to make an order for his re-instatement. Ground 1 fails and is accordingly dismissed.

Ground 2 is really unnecessary and uncalled for as the court below granted him declaration for wrongful termination of appointment. It is therefore granted.

The third ground relates to the refusal of the court below to grant him arrears of salary. The court below awarded a lump sum of twenty thousand Ghana cedis (GH₵20,000.00) by way of general damages, claimed by the fifth relief. The Court appears to have rejected the third relief asking for payment of his salary and other benefits from 1st February 2008 as well as the fourth relief for special damages equivalent to two years annual gross salary. The court's reasoning was that special damages must be specifically proven. Obviously the court below got it wrong in the light of the authorities. The reasoning in the Agbettoh case which was cited with approval by this court in the Valco case should have served as a guide to the court below. The court stated that to show its displeasure at the dismissals in the light of the constitutional provision, it awarded two years' salary to the plaintiffs in the Agbettoh case. The court in both the Agbettoh case and the Valco also took into account the fact that the plaintiffs were under a duty to mitigate their losses by looking for alternative employment and that it was unreasonable to ask to be paid salary and benefits for the whole period that they stayed at home doing nothing for the employers. As already stated, in the Agbettoh case the court awarded two years' salary, whilst in the Valco case the Supreme Court endorsed the one year salary awarded by the trial High Court. These are the principles that should guide the court, and should not be treated as a claim for special damages. Admittedly, the court below must have been misdirected by the nature of the reliefs endorsed on the writ.

On the facts of this case, it is clear the police administration treated the plaintiff's case with disdain, contempt and high-handedness, which we very much deplore. They did not even acknowledge his petitions, let alone to act on them. It was after he had exhausted all avenues open to him that he resorted to court action. In the circumstances, and taking into account the rather difficult situation in securing employment, and the fact that the salary as at 2008 values far less than it is today in the light of cedi devaluation, we make an award of two years basic salary attached to the post of Police lance corporal as of today. The court below, in its discretion, awarded GH₵20,000 as general damages; this was not in issue as same was not contested, so we affirm it. In addition the court also awarded him his earned salary for the period February to July 2008 when he was on interdiction. The plaintiff is adjudged to recover the said salary attached to the post of a lance corporal as at that time, that is the period February to July 2008 by way of special damage, together with interest on the amount found due on this head at the prevailing bank rate from 1st August 2008 to date of payment. The appeal therefore succeeds to the extent stated herein.

A. A. BENIN
(JUSTICE OF THE SUPREME COURT)

W. A. ATUGUBA
(JUSTICE OF THE SUPREME COURT)

V. J. M. DOTSE
(JUSTICE OF THE SUPREME COURT)

P. BAFFOE-BONNIE
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