



TRINIDAD AND TOBAGO

**ST 017/2014, ST 018/2014, ST 022/2014,
ST 025/2014, ST 004/2015 and ST 012/2015**

IN THE INDUSTRIAL COURT

PUBLIC SERVICES ASSOCIATION OF TRINIDAD AND TOBAGO - PARTY NO. 1

AND

MINISTRY OF TOURISM, - PARTY NO. 2

MINISTRY OF THE ENVIRONMENT AND WATERRESOURCE FORESTRY DIVISION,

MINISTRY OF NATIONAL SECURITY, IMMIGRATION DIVISION,

THE CHIEF PERSONNEL OFFICER,

CORAM:

Her Honour, Mrs. D. Thomas-Felix

- President

His Honour, Mr. L. Achong

- Chairman, ESD

APPEARANCES:

Mr. Lloyd Elcock

Attorney at Law

for the Public Services Association of Trinidad and Tobago

)

) - Party No. 1

)

No appearance on behalf of the

Ministry of Tourism

Ministry of the Environment and Water Resources Forestry Division

Ministry of National Security, Immigration Division

)

) - Party No. 2

)

)

Ms. Arusha Davis

Legal Officer

for The Chief Personnel officer

)

) - Party No. 2

)

DATED: 15th March, 2017

RULING

The Public Service Association (PSA) has filed several matters before the Special Tribunal, these matters concern the issue of transfers, appointments and promotions of members of the Public Service of Trinidad and Tobago.

We have consolidated a few of these matters to determine whether or not the Special Tribunal of the Industrial Court has jurisdiction to adjudicate upon these issues. We have not been provided with the files and pleadings in these cases because we are only addressing the jurisdictional issue, which is, whether these disputes can be brought before the Special Tribunal of the Industrial Court.

The Chief Personnel Officer's (CPO's) representative, Ms. Davis argued that the Special Tribunal does not have jurisdiction to hear and determine these matters and cites, among other things ST 1 of 1997 and Section 121 of the Constitution of Trinidad and Tobago to support this contention. The CPO submits that the proper forum for the ventilation of issues concerning promotions, appointments, transfers of public officers is the Public Service Commission (PSC).

Mr. Elcock the Association's representative acknowledged that Section 121 of the Constitution vests in the PSC the power to appoint, promote and transfer; he argued however, that ST 1 of 1997 is "wrong in law and that the practice which has evolved over the past forty (40) years as a result of the ruling in ST 1 of 1977 is incorrect."

He submitted that, "If I may just look at the bigger picture for a minute the Civil Service, as it is now, was established by the Civil Service Act 1965 and by Section 3 it established the civil service and the classifications that are set out in the schedule. Then the Public Service Commission was renewed, so to speak, by the independence constitution of 1976 and it is given jurisdiction over appointments, promotion, transfer and discipline of civil servants. And

then you have the Public Service Commission Regulations which set out the jurisdiction of the Civil Service....the Public Service Commission is a kind of surrogate employer of all civil servants - in fact, all public servants; we are dealing with civil service here - and their job is to appoint, transfer, promote and discipline. Now, discipline is taken by the public service disciplinary tribunals, which again, are provided for under the Public Service Commission Regulations....If an officer is aggrieved by a decision of the disciplinary tribunal, that officer can appeal to the Public Service Appeal Board. It doesn't have to go to the High Court with a constitutional motion or judicial review. It goes to the Public Service Appeal Board.....if an officer is aggrieved by a decision of the Public Service Appeal Board, he can appeal to the Court of Appeal and ultimately, the Privy Council. So when it comes to discipline, civil servants have the PSA to protect them....the Industrial Court is also a superior court of record just like the High Court.”

RULING

We have considered all of the submissions in these matters. Despite Mr. Elcock’s very spirited argument, Section 121 of the Constitution of the Republic of Trinidad and Tobago vests in the Public Service Commission the power to appoint persons to hold or act in offices where applicable, including power to make appointments on promotion and transfer and to confirm appointments, and also to remove and exercise disciplinary control over persons holding or acting in such offices and to enforce standards or conduct on such officers.

It is clear from the very wording of the Section that issues of promotion, transfer and appointments are directly are entirely within the remit of the PSC.

We will adopt the dicta of Mr. Justice Ventour and emphasize that: "...there is no intention of this Court to position itself in the role and function of the Public Service Commission to direct who should be appointed to act in the offices or to make appointment on promotion. That is the function of the Commission under the provisions of the Constitution."¹

It is our ruling that the Special Tribunal of the Industrial Court does not have jurisdiction to adjudicate upon issues of promotion, transfer and appointments which fall within the purview of the PSC. We note that persons who are not satisfied with any decision of the PSC and its appeal process can avail themselves to judicial review at the Supreme Court of Judicature.

We hold further that there is no need for us to pronounce on whether these matters are grievances within the meaning of the Civil Service Act.

We so rule.

**D. Thomas-Felix
President**

**L. Achong
Chairman, ESD**

¹ HCA 2173 of 2005 Ronald Walcott vs The Public Service Commission, pg 19