9 March 2015

PRESS SUMMARY

Annissa Webster and others (Appellants) v The Attorney General of Trinidad and Tobago (Respondent) [2015] UKPC 10
On appeal from the Court of Appeal of the Republic of Trinidad and Tobago

JUSTICES: Lady Hale, Lord Kerr, Lord Wilson, Lord Carnwath, Lord Hodge

BACKGROUND TO THE APPEAL

Trinidad and Tobago has two classes of police officer, regular police officers (RPOs) and special reserve police officers (SRPOs) (as well as the municipal police force which is the subject of the decision in *Alleyne v Attorney General* [2015] UKPC 3). The issue in this appeal is whether the 'right to equality of treatment from any public authority in the exercise of its functions' found in section 4(d) of the Constitution of Trinidad and Tobago entitles SRPOs to equal treatment with RPOs.

The Regular Police Force was established under the Police Service Act of 1965, the Special Reserve Police Force under the Special Reserve Police Act of 1946. SRPOs did not enjoy the same constitutional protection as RPOs and were originally established to be available in specified emergencies. In 1967 the permissible use of SRPOs was widened to include regular policing when required, and soon SRPOs were used on a permanent basis due to the increasing need for manpower in the Trinidad and Tobago Police Service. They received the same basic pay as RPOs but were not entitled to the same benefits, in particular to free medical treatment, overtime payments, a housing allowance and a pension.

On 1 April 2000 the Cabinet decided to discontinue the practice of using SRPOs in this way and to absorb those SRPOs who had been continuously employed on a full time basis for two years or more into the regular police service with the rank of constable. SRPOs had to be able to meet certain entry criteria to do so, and were otherwise offered a separation package.

The present proceedings were brought by 592 (now 258) officers originally appointed as SRPOs, including absorbed officers, those who continued full or part time work as SRPOs after the Cabinet decision and officers who retired both before and after that decision. Their complaints fell into two categories: first that they were not treated in the same way as RPOs before the Cabinet decision and second that those who remained serving police officers, whether as RPOs or as SRPOs, were still not being treated equally with other RPOs.

The State successfully argued before the courts below that the difference in the statutory schemes governing the appointment and service of RPOs and SRPOs justified the difference in treatment between them.

JUDGMENT

The Board unanimously dismisses the appeal. It holds that the difference in the statutory schemes was insufficient in itself to defeat the claims, but it is now too late for the appellants to challenge the finding of fact made in the courts below that SRPOs and RPOs performed significantly different duties. Lady Hale gives the only judgment.

REASONS FOR THE JUDGMENT

The right to equal treatment extends to public officials in their relationship with their state employers and is of general application rather than limited to particular grounds for discrimination [**12**]. The current approach to s 4(d) of the Constitution of Trinidad and Tobago case is as follows [**24**]:

- The situations must be comparable, analogous or broadly similar, but need not be identical. Any difference between them must be material to the difference in treatment;
- Once broad comparability is shown, it is for the public authority to explain and justify the difference in treatment;
- To be justified, the difference in treatment must have a legitimate aim and there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised;
- Weighty reasons will be required to justify differences in treatment based on the personal characteristics mentioned at the outset of s 4: race, origin, colour, religion or sex; and
- It is not necessary to prove mala fides on the part of the public authority in question.

There is considerable overlap between the 'sameness' and justification questions because the materiality of a difference between the two situations will to some extent depend on whether it is sufficient to explain and justify the difference in treatment [**25**].

There was nothing in the statutory scheme which required SRPOs to be treated very differently from RPOs and it could not therefore in itself justify the different terms and conditions, as the lower courts had found [**29**]. This would require the Board to remit the case to the High Court unless it was clear that there were other reasons sufficient to justify the difference in treatment of any of the appellants [**31**].

There were differences in the qualifications required and the training for appointment as an RPO or SRPO. The question, however, was whether these differences were relevant to the actual work which the appellants were being required to do. If the appellants were perfectly well qualified to do the same work as their RPO colleagues, the differences in qualifications and training could not justify the very substantial differences in treatment [**33**].

The evidence on the 'sameness' of the work carried out by the two classes of officer was far from satisfactory and there was no cross examination of witnesses on either side. The courts below were not told of the fact that the State had conceded in an earlier case that the SRPOs and RPOs were appropriate comparators for the purposes of a s 4(d) claim [**35**]. The Cabinet decision showed that the Government had itself concluded that the work SRPOs did was sufficiently equivalent to justify and require their absorption [**41**]. The Board, however, faced the difficulty that the courts below had found as a fact that the SRPOs performed duties of significantly lesser responsibility. The appellants could have challenged the State's evidence to that effect but failed to do so and it was now too late [**44**]. The Board saw no sufficient reason to depart from its normal practice not to go behind the concurrent findings of fact in the courts below [**45**]. Remitting the case would also face the difficulty of establishing the correct cut off point for claims and raise the issue of whether the government was obliged to provide unlimited retrospective relief for officers who had made no complaint at the time [**49**]. Thus with some hesitation, because it was not inconceivable that a difference conclusion might have been reached on the facts, had the evidence been properly directed and examined, the Board dismisses the appeal [**50**].