JOB TUHAIKA & ANOTHER -v- ATTORNEY GENERAL (First Respondent) Controller of Prisons (Second Respondent)

High Court of Solomon Islands
(Palmer J.)
Civil Case No. 383 of 1992
Hearing: 25 May 1993
Judgment: 28 July 1993

A. Radclyffe for Appellant
P. Afeau for First and Second Respondents

PALMER J: On the 13th December 1991 the First and Second Applicants, namely, Job Tuhaika and Walter Talua were convicted by the Second Respondent, the Controller of Prisons, and duly dismissed from the Solomon Islands Prison Service. Both Applicants allege that the convictions and dismissals were unlawful, unconstitutional and void as they were made in circumstances where the Second Respondent was "a judge of his own cause" and therefore was in breach of the 'fair hearing, independent and impartial' requirements of section 10(1) and or section 10(8) of the Constitution and/or the rules of natural justice. Both applicants sought declarations accordingly including a declaration that they have never been terminated as from the 13th of December 1991.

BACKGROUND OF THE CASE:

The applicants had been charged under Regulation 71(g)(v) of one count each and an additional count for Walter Talua under Regulation 71(g)(a) of the Prisons Regulations 1973. At the time of their dismissals, Job Tuhaika held the rank of 'Officers' Level 3, whilst Walter Talua was a Chief Officer 1, Level 4A.

The charges related to a petition signed by the applicants together with others addressed to the Minister of Police and Justice. The petition requested that the Minister of Police & Justice appoint a special committee under Section 9 of the Prisons Act to enquire into and report upon the conduct, management or administration of the Central Rove Prison, with specific references to the following matters listed:

(i) On the light of 25 July 1989, there was a store break-in at the Central Prison Stores but to date the culprits (duty officers on that night are the suspects) have not been brought to justice.

(ii) Financial position of the Prison Mess has not been in order - debts owing to retail store etc.

(iii) In-house enquiry into the Prison Services Fund established under Section 42 of the Prisons Act revealed that our Passbook Account with Westpac 0184155430 has the only balance of $209.72.

(iv) Threatening correspondences and remarks from the Controller to officers junior in rank to him.

(v) Degrading of the Controller of Prison's Office."

The Petition was dated 13/11/91. The petition was received on or about the 18/11/91 by the Minister. The comments of the Minister are noted on the original petition (a copy of which has been filed and marked exhibit CS2 in the affidavit of Christopher Saungao filed on the 5th May 1993). They read as follows:

> *" I would like to see that proper procedures be complied with. Send this to the Controller of Prisons for his comments".*

The reaction of the Controller of Prisons was swift. He had the two applicants charged immediately for offences of breach of confidence contrary to Regulation 71(g)(v) and (a). For Mr Talua the particulars of his offences read:

> *"That you, Chief Officer I.86 Talua a Prison Officer, between 13th and 18th November 1991, signed a petition with regard to matter concerning the service, to the Minister of Police and Justice, without going through the proper channel i.e. correspondence to or through the Controller of Prisons".*

Count 2:

> *"That you, Chief Officer I.86 Talua a Prison Officer, have disobeyed an order from your Superior office, the Controller of Prisons directing you to submit your report to him by 22nd November 1991, explaining your reasons in signing the petition with regard to matters concerning the service, to the Minister of Police and Justice, without going through the proper channel i.e. correspondence to or through the Controller of Prisons."*

The particulars of Job Tuhaika's charge are similarly worded to the first count in Talua's charge.

The applicants were duly served with copies of their charges and the date for hearing the charges fixed for the 4th December 1991 at 0900 hours.

The hearing was conducted before the Assistant Controller of Prisons (Training) Mr Tamaeri. The prosecutor/complainant was the Second Respondent. He was also the sole witness against the applicants. The applicants pleaded not guilty to all the charges. Exhibit 'CS5' are copies of the findings of the Assistant Controller of Prisons annexed to the affidavit of Christopher Saungao filed on the 5th of May 1993.

In the record of proceedings in the First Applicant's case, under sub-heading "Re EXAMINATION: the first applicant states:

> *"I was elected and so I had to sign the Petition. That is all".*

In count one of the Second Applicant's case, under sub-heading "Re Examination in Chief", the Second Applicant states:

> *"It is true that I signed the Petition".*

Under the second count, the Second Applicant states:

> *"My statement of 25.11.91 is a self-explanatory. On an unknown date in November 1991, I called upon the Staff Officer in his office as I was told. He handed me a Note from the Controller of Prisons which I read and understood the contents. I was thinking to make any statement as required but unfortunately I was unable to make due to my unexpected illness as I had a positive case of Malaria on that particular day. Please see my Test Result of Lab attached to the cover of this file. In fact I was granted 3 days sick leave. After my recovery from my illness I then made my statement on the 28.11.91. I did not mean to disobey the order in anyway. I would like to apologise for the delay caused".*

The finding of Mr Tamaeri inrespect of Job Tuhaika's case was:

> *"The hearing officer has found the defaulter GUILTY as charged upon his own admission".*

Inrespect of count one of Walter Talua's case Mr Tamaeri found as follows:

"(a) It is true that the Petition has been signed by the defaulter as he made his voluntary admission above, in re examination in chief.

(b) The Petition contained matters concerning the service (Administration / Management)

(b) The Petition was sent direct to the Minister without first going through the Controller of Prisons as required by Law.

I therefore found the defaulter GUILTY as charged".

Under Count two the verdict was:

"It would seem that to me that the excuses made above by the defaulter was reasonable. I therefore found him NOT GUILTY on this Second charge".

On the 12/12/91 at 1400 hrs Mr Tamaeri made the following entry in an Enquiry File exhibited as "CSA" to the affidavit of Christopher Saungao filed on the 24th May 1993:

"Sir this is a case of Breach of confidence contrary to section 71(g)(v) of the Prisons Regulations 1973. There are four defaulters who were jointly charged as above namely 1).....2) CPO1 80 W. Talua, PO 132 Tuhaika ..... They all pleaded not guilty. After hearing the evidence however, the hearing officer have found them all Guilty of the alleged charge.

....CPO 1:86 Talua was also charged for two counts, the second of which a charge of Disobeying Lawful Order. Due to his reasonable excuse as being sick during that particular week end and the circumstances surrounding his health. I had to be more flexible in giving my sympathetic decision and therefore found him not guilty.

..... Sir, case forwarded for review and award of punishment, as I am unable to do it since that nearly every one of them have a long chain of previous convictions."

On the 13th of December 1993 the applicants were brought before the Second Respondent for review. In both cases, the Second Respondent found them guilty. In Walter Talua's case, he was also convicted on the second count.

In Job Tuhaika's case mitigation was given by Mr H.W. Bennett. Both applicants were dismissed from the Prison Service on the same day. A letter confirming the discharge was subsequently issued to both applicants dated 17/12/91.

In Job Tuhaika's case, the Second Respondent relied on section 17 of the Prison Act 1972 for his dismissal. In Walter Talua's case he relied on section 32(2) of the Prisons Act 1972 and section 124(2)(c) of the constitution.

On the 18th December 1991 the applicants filed a notice of appeal against their dismissals to the Police and Prisons Service Commission.

The matter came before the Commission on the 5th February 1992 but it declined to hear the appeal and asked that the issues of law be brought before a court to sort out. I quote the finding of the Commission:

> *"The Commission was of the view that the Commission was not a body to interpret the constitution, only the High Court can do so. The Commission then ADVISED Messrs R. Teutao and P. Afeau to seek a High Court hearing or declaration on the points of law raised by R. Teutao".*

A copy of the decision of the Commission can be found annexed to the Affidavit of Walter Talua filed on the 22nd March 1993. The decision is marked exhibit 'D'.

An action was then instituted in this court by way of an origination summons filed on the 28th December 1992.

THE LAW:

The powers of the Second Respondent are contained in section 124 of the Constitution and section 32 of the Prisons Act.

Section 124 (2) reads:

> *"The following powers are vested in the Superintendent of Prisons -*
>
> *(a) in respect of officers of or above the rank of Prison Officer, the power to administer reprimands;*
>
> *(b) in respect of Assistant Prison Officers, the power to exercise disciplinary control other than removal or reduction in rank; and*
>
> *(c) in respect of officers below the rank of Assistant Prison Officer the power to exercise disciplinary control including the power of removal.*

(3) The Superintendent of Prisons may, by directions in writing, and subject to such conditions as he thinks fit, delegate to any officer in the Prisons Service of or above the rank of Assistant Prison Officer any of his powers under subsection (2)(c) of this section other than the powers of removal, but an appeal from any award of punishment of such an office shall lie to the Superintendent of Prisons."

It needs to be pointed out that in 1986 the Solomon Islands Prison Service was re-organised administratively. One of the things changed was the titles of officers of the Prison Service. The new titles are contained in exhibit 'CS1' annexed to the affidavit of Christopher Saungao filed on the 5th of May 1993. The Superintendent of Prisons is now called the Controller of Prisons. Officers over which the Controller of Prisons can exercise the power of removal range from officer - Level 3 to Chief Officer 1 - Level 4A.

Sections 32,33 and 34 of the Prisons Act read as follows:

"*(32) (1) Any offence against discipline under this Act may be inquired into and dealt with by the Superintendent of Prisons and by any officer in charge.*

(2) The Superintendent of Prisons shall have the power to impose any one or more of the following punishments:-

(i) reprimand;
(ii) severe reprimand;
(iii) fine not exceeding ten days' pay;
(iv) reduction in rank;
(v) dismissal;
(vi) confinement to quarters for any period not exceeding fourteen days with or without extra duties.

(3) An Officer in Charge shall have power to impose any one or more of the following punishments on any subordinate officer:-

(i) reprimand;
(ii) confinement to quarters for any period not exceeding seven days with or without extra duties;
(iii) fine not exceeding five days' pay.

(4) No prison officer shall be convicted of an offence against discipline unless the charge has been read and inquired into in his presence and he has been given sufficient opportunity to make his defence thereto.

(5) Any prison officer upon whom a punishment is inflicted which entitles him to appeal to the Police and Service Commission under section 34 shall, at the time when such punishment is imposed, be informed of his right of appeal.

(33) (1) The Superintendent of Prisons shall have power to review all disciplinary proceedings under this Ordinance, other than proceedings ought to be revised, shall have power-

(a) to quash the finding;

(b) to alter the finding and find the accused guilty of another offence;

(c) with or without altering the finding-

(i) to reduce or increase the punishment;

(ii) with or without such reduction or increase, to alter the nature of the punishment; or

(d) to remit the proceedings to the officer who heard them or to another officer for rehearing:

Provided that the Superintendent of Prisons shall not-

(i) impose any punishment which the officer who conducted the proceedings was not empowered to impose;

(ii) increase any punishment without giving the accused an opportunity of making representations either orally or in writing as the accused may decide.

(34) (1) Any prison officer upon whom the Superintendent of Prisons has imposed any punishment which included-

(i) reduction in rank; or

(ii) dismissal,

may appeal in the manner hereinafter provided to the Police and Prison Service Commission against either the finding or the punishment or both, and the Commission may confirm, set aside or vary the finding and confirm, set aside, reduce, suspend or otherwise vary the punishment:

Provided that nothing in this subsection shall be construed as empowering the award of any greater punishment than could have been awarded by the officer inflicting the punishment."

Regulation 71(g)(v) of the Prisons Regulations 1973, of which the applicants have been charged with read as follows:

".....any subordinate officer shall be guilty of an offence against discipline if he is guilty of breach of confidence, that is to say, if he-

signs or circulates any petition or statement with regard to any matter concerning the service, except through the proper channels or correspondence to the Superintendent of Prisons;"

In respect of Walter Talua, his second count under Regulation 71(a) reads:

".... any subordinate officer shall be guilty of an offence against discipline if he is guilty of - disobedience to orders, that is to say, if he disobeys or without good and sufficient cause omits or neglect to carry out any lawful order, written or otherwise;"

The first issue raised by counsel for the applicants relates to the procedural requirement of section 32 (1) of the Prisons Act. That subsection as quoted above referred to an inquiry to be conducted by the Superintendent of Prisons and any Officer in charge. An officer in charge is defined in section 2 of the Act as:

".....the officer for the time being having charge of any prison".

Counsel for the applicant submit that the correct persons to deal with the case are the Controller of Prisons and/or the Officer in Charge of Central Prison, who is Mr Hugh Bennett, not Mr Tamaeri.

Mr Primo Afeau, learned counsel for the first and second Respondent however submitted that section 124(3) of the Constitution enabled the second Respondent to delegate his power under subsection (2)(c) of section 124 which powers included the power to exercise disciplinary control. Mr Radclyffe however counters by saying that

the power to be delegated is the power to exercise disciplinary control while section 32(1) refers to the power of inquiry.

This court is of the view that in order to exercise the power of disciplinary control one must necessarily have the power of inquiry. A fair, wide and liberal interpretation must be given to that power. It is only in cases where the particular disciplinary action or punishment to be meted out is considered to be insufficient by the person conducting the inquiry that he/she transfers the matter to another person with the requisite higher or wider powers. Usually, the disciplinary action is done by the person conducting the enquiry. This is only fair, because he/she would have been in a better position to do that having heard all the evidence in the first instance.

Further section 26 of the Interpretation and General Provisions Act states:

> *"Where an act confers a power to do any act or thing, all powers reasonably necessary to enable the act or thing to be done are also conferred by the Act."*

The power to exercise disciplinary control cannot be exercised in vacuum. The person exercising that needs to be satisfied that such a power can and should be exercised in any particular case. And in order to be satisfied he must be able to conduct an inquiry.

Accordingly, I hold that section 124(3) does allow the Second Respondent to delegate his powers of disciplinary control which include the powers of enquiry provided for in section 32(1) of the Prisons Act.

The requirements however imposed by section 124(3) that the delegation be done by directions in writing appears not to have been fulfilled. There is no evidence of any such written directions from the Second Respondent to Mr Tamaeri.

Accordingly there has been a failure to comply with a requirement set out under section 124(3).

The second issue raised by Mr Radclyffe relates to the powers of review of the second Respondent with specific reference to proviso (1) of section 33 which provides that the Superintendent of Prisons shall not *"impose any punishment which the officer who conducted the proceedings was not empowered to impose"*. The argument of Mr Radclyffe is that the Second Respondent could not lawfully dismiss the applicants under proviso (i) of section 33 because the powers Mr Tamaeri had did not include the power of removal.

Mr Afeau however counters by pointing out that the Second Respondent had the power to remove the applicants because their case had been forwarded to the Second Respondent under section 36 of the Prisons Act.

Section 36 of the Prisons Act states:

> " *In any case where a subordinate officer has upon inquiry been found to have committed an offence against discipline and where it appears to the officer conducting the inquiry that, by reason of the gravity of the offence or by reason of previous offences or for any other reason, the offender would not be adequately punished by any of the punishment he is empowered to impose, such officer shall record any statement which the offender wishes to make in mitigation and shall stay the proceedings and transmit them to the Superintendent of Prisons, and the Superintendent of Prisons may impose such punishment as he deems warranted or he may direct that the case be dealt with by the officer who transmitted it:*
>
> *Provided that when no statement in mitigation has been recorded, the Superintendent of Prison shall give the offender an opportunity of making representations to him either orally or in writing as the Superintendent of Prisons in his discretion shall direct.*"

In exhibit 'CSA' annexed to the affidavit of Christopher Saungao filed on the 24th of May 1993, Mr Tamaeri stated:

> "*..... Sir, case forwarded for review and award of punishment, as I am unable to do it since that nearly every one of them have a long chain of previous convictions*".

There are two things raised in this statement which appears to have caused confusion. One is the use of the word 'review' which relates to section 33 of the Prisons Act, and the other is in forwarding the case for punishment due to a long chain of previous convictions, which related to section 36 of the Prisons Act. Further, in the letter of the 17th December 1991 addressed to Mr Walter Talua, the Second Respondent stated at para. 3 of his letter the following:

> "*On the 13th December 1993, you were brought before me in accordance with section 33(1) of the Prisons Act 1972, at which time you were found guilty on both charges*".

If it is correct that the applicants were dealt with under section 33, then the Second Respondent would have been caught by its proviso. However, Mr Afeau submits that the case was actually brought before the Second Respondent pursuant to section 36 of the Prisons Act.

There is evidence to show that Mr Tamaeri had section 36 in mind when he forwarded the case to the Second Respondent; although no specific mention was made of that section. However, in the Second Respondent's letter to Walter Talua he makes it clear that he was dealing with Walter Talua's case pursuant to section 33(1) of the Prisons Act. In the Second Respondent's letter to Job Tuhaika dated 17/12/91, (exhibit 'CS5' in affidavit of Christopher Saungao filed on the 5th May 1993) at para. 3, he also states:

> " *I have reviewed his findings which I endorsed, hence you were found guilty as charged.*"

The powers purported to be exercised related to section 33, the powers of review. If that is so then the Second Respondent is caught by the proviso. Perhaps there has been a mistake or an oversight on the part of the Second Respondent. However, he has made his bed and he must lie on it. The applicants are entitled to be informed about the powers with which the Second Respondent has relied on.

I am satisfied on the balance of probability that the Second Respondent had section 33(1) in mind and was relying on that section when he imposed the punishment of removal. In Walter Talua's case for instance, he reviewed the finding of 'not guilty' in his second charge and substituted a finding of guilty. This is consistent with the exercise of his review powers in section 33(1). I am satisfied therefore that there has been a breach of the proviso in section 33(2) of the Prisons Act. This is the second breach or non-compliance with the provisions of the Prisons Act.

The third issue raised by Mr Radclyffe relates to the question as to what are the proper channels through which a petition or statement concerning the Prison Service should be directed through?

The other alternative is correspondence to the Superintendent of Prisons. This is fairly clear.

Mr Radclyffe has submitted that proper channels would include signing a petition as had occurred in this case and addressing it to the Minister responsible for the Prison Service. The allegations contained in the petition referred to the Second Respondent in person and therefore it was not proper to channel the petition to him but to put it through the Minister responsible for the Prison Service. Secondly, the applicants did obtain legal advice from a solicitor in the Attorney General's Office. Based on that advice, they sent the petition to the Minister for Police and Justice.

The question as to what those proper channels are has not been addressed specifically in the Prisons Regulations or the Prisons Act. It is interesting to note that the particulars

of the charge against the applicants state: *'without going through the proper channel, ie. correspondence to or through the Controller of Prisons'.*

With due respects the wording of Regulation 71(g)(v) does not say that the proper channel shall be by correspondence to or through the Controller of Prisons. Rather it refers to 'proper channels or correspondence to the Superintendent of Prisons'.

The word 'or' as used in the context of the phrase is to be read as disjunctive. The words 'proper channels' therefore would mean or refer to the hierarchical chain of command and responsibility in the Prison Service. At the top of the structure is the Controller of Prisons. He in turn is responsible to the Minister. Then there is the Deputy Controller and I would think the officer in charge of Prisons. Then the Assistant Controller (Training) and the Assistant Controller (Admin.).

A petition or statement directed to anyone of those in command according to the hierarchy of command would in my view be in accordance with the requirement of the Regulation. For instance, a petition directed against the Officer in charge should be sent through the Controller. A petition however against say a senior commandant can be directed to the Officer in Charge instead. And it would seem to be plain common sense and logical to send a petition containing allegations against the Controller of Prisons to the Minister to which he is responsible to, rather than sending them to him directly.

The other alternative as expressed by the use of the word 'or' is in directing correspondence to the Superintendent of Prisons. But if there are allegations made directly involving the Superintendent of Prisons, then the reasonable and common sense thing to do it seems is to direct it to someone to whom he is accountable or responsible to. This I find the applicants have done after obtaining legal advice. There doesn't appear to be anything wrong about the procedure adopted by the applicants. But if I should be over-ruled on this point, there is another important point to note, and this is the absence it seems of a deliberate intent to breach the provisions of Regulation 71(g)(v). The applicants stated in paragraph 13 of Walter Talua's affidavit filed on the 22nd of March 1993 that Mr Katoa went and sought legal advice from the Public Solicitor's Office, but on that day he went, there was none available and so he called in to see a solicitor at the Attorney General's office. Based on the advice of that solicitor, the petition was then forwarded directly to the Minister. The Solicitor in the Attorney General's department must have had access to the Prison Regulations and thus made the appropriate advice accordingly.

As a result of that advice, the applicants directed their petition to the Minister. The circumstances surrounding the petition therefore showed an absence of a deliberate intent to commit that offence.

The charge accordingly is defective. And the whole proceedings subsequently was void. Although the Second Respondent may have complied with all the requirements as set out under the Prisons Act, it would have mattered little as the proceedings were conducted inrespect of defective charges. This is the third breach or non-compliance with the requirements of statute law. This brings me to the next important question of whether the fair hearing, independent and impartial provisions of section 10(1) and section 10(8) of the Constitution have been breached.

Section 10(1) of the Constitution states:

> *"If any person is charged with a criminal offence, then, unless the charge is withdrawn, that person shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law."*

The distinctions to bring out in this section are:

(1) What is a criminal offence?, and secondly, what is a court?

The words 'crime' or 'criminal' are not defined in our Penal Code or the Criminal Procedure Code. In **Halsbury Laws of England, 4th Edition (Reissue) Vol.11(1), at page 16 para. 1,** it makes the following statement:

> *"'Criminal' and 'crime' are words of ordinary English usage. There is no satisfactory definition of crime which will embrace the many acts and omissions which are criminal, and which will at the same time exclude all these acts and omissions which are not. Ordinarily a crime is a wrong which affects the security or well-being of the public generally so that the public has an interest in its suppression. A crime is frequently a moral wrong in that it amounts to conduct which is inimical to the general moral sense of the community. There are, however, many crimes which exhibit neither of the above characteristics."*

The first thing that can be said about Regulation 71(g)(v) is that it is a disciplinary offence. Secondly it is an offence created by statute and limited to the Solomon Islands Prison Service. It does not apply to the public at large.

It does not affect the security or well-being of the public generally, though perhaps one may say in an indirect manner. Also it does not affect the general moral sense of the

community. It is rather an offence that is peculiar to the set up of the Prison Service as a disciplined force and its function as set out in the Act.

At paragraph 2 of **Halsburys Laws of England at the same page,** the learned author also states and I quote:

> *"Whether conduct amounts to a crime may be determined by ascertaining whether the conduct in question is followed by criminal or civil proceedings."*

When one considers the proceedings in such a case which will eventually result in some form of punishment then perhaps one could say that there is an element of a crime involved.

The second part of section 10 however refers to a count. The Interpretation and General Provisions Act at section 16 defines a count as *"any court of Solomon Islands of competent jurisdiction."*

There are basically four courts of competent jurisdiction in Solomon Islands; the Local Court, the Magistrate Court, the High Court and the Court of Appeal. The hearing in the applicants case was conducted before Mr Tamaeri and then before the Second Respondent. They were not before a court. Section 10(1) therefore of the Constitution did not apply and would not apply in the circumstances of the applicants.

I shall now consider section 10(8) of the Constitution. That subsection reads:

> *"any court or other adjudicating authority prescribed by law for the determination of the existence or extent of any civil right or obligation shall be established or recognised by law and shall be independent and impartial,....."*

The allegation levelled against the Second Respondent is that he had acted unfairly. In essence he was the complainant as well as the person who meted out the punishments, and was a judge in his own cause.

I would have felt obliged to consider these allegations had my earlier findings been otherwise. However, in view of what I had found it seems unnecessary to consider whether there had indeed been any breaches of section 10(8) and the principles of natural justice.

I will however deal with Mr Afeau's submission in which he argued that section 19(3) of the Constitution has the effect of excluding not only section 10(8) of the Constitution but also the rules of natural justice.

The effect of section 19(3) can be more clearly described as follows. If the disciplinary law would sanction or justify the actions of what one has done, then even if it was found to be inconsistent with or in contravention of the provisions of Chapter II of the Constitution other than section 4,6,7,8 and 15, what was done will be held to be valid and lawful.

If however, there is no inconsistency or contravention then naturally the provisions of Chapter II other than subsections 4,6,7,8 and 15 will apply.

The same thing can also be said of the rules of natural justice. These are rules of general application and unless they are expressly excluded or by necessary implication they should also apply.

Can the disciplinary law, in this case the Prisons Act, sanction or justify a defective charge? Can it sanction or justify the dismissal of the applicants when the powers purported to be exercised by the Superintendent of Prisons under section 33 of the Prisons Act did not allow him to do so? The answer in both cases must be no. The dismissal therefore of the two applicants was unlawful in terms of the provisions of the Prisons Act. In terms of section 124(c) of the Constitution, there has been non-compliance with one of its requirements, though it may be argued that this was only a procedural or minor defect and that in all there has been substantial compliance.

The declarations sought therefore inrespect of the Constitutional provisions are denied. The only declaration made will be that the conviction and dismissal of the applicants pursuant to the provisions of the Prisons Act and Prisons Regulations were unlawful.

The third declaration sought will not be granted. The question of reinstatement or payment of damages for the unlawful termination of the applicants is a matter for the Police and Prisons Service Commission to deal with. That body has very wide powers under section 34(1) of the Prisons Act. It is the appropriate body to deal with this issue especially when there has been a lapse of almost 18 months already.

Costs will be borne by the Crown in this instance.

(A.R. Palmer)
JUDGE