



## **JUDGMENT**

### **Ranjan Rampersad (Appellant) v Commissioner of Police & Police Service Commission (Respondents)**

**From the Court of Appeal of the Republic of Trinidad  
and Tobago**

before

**Lord Phillips  
Lord Brown  
Lord Mance  
Lord Kerr  
Lord Dyson**

**JUDGMENT DELIVERED BY  
Lord Dyson  
ON**

**9 August 2011**

**Heard on 17-19 May 2011**

*Appellant*

Sir Fenton Ramsahoye SC  
Elton Prescott SC  
Tom Richards  
Anthony Bullock  
Jodie Blackstock  
Sanjeev Datadin  
Cindy Bhagwandeem

(Instructed by Bankside  
Commercial Solicitors)

*Respondent*

Peter Knox QC  
Miss Carol Hernandez  
Ms Nadine Nabie

(Instructed by Charles  
Russell LLP)

## **LORD DYSON:**

1. The issues raised on this appeal are similar to those raised in *Ganga and others v Commissioner of Police and Police Service Commission* [2011] UKPC 28. This judgment should be read with the Board's judgment on the appeal in that case, where the relevant statutory and other material is set out and reviewed.

2. The appellant joined the Police Force of Trinidad and Tobago on 2 September 1985 as a police constable. He was appointed acting corporal on 29 December 1997. Thus at the time with which these proceedings are concerned, he was an officer in the Second Division of the Police Force. All officers in the Second Division were assessed for promotion by the Commissioner of Police ("the Commissioner") in November 2005. By a letter dated 11 November 2005, the Commissioner informed the appellant that he had been omitted from the list of persons "selected for promotion to the rank of Corporal as officers selected received a higher score". He had been given a total of 71 marks out of a possible 85 marks in the points-based system which is described in detail in the Board's judgment at paras 19 to 21 of its judgment in *Ganga*. He was informed that he could make representations to the Police Service Commission ("the Commission").

3. The appellant made his representations by letter dated 25 November 2005. By Departmental Order No 142 dated 26 May 2006, the Commission announced its approval of more than 200 officers to the rank of police corporal, but the appellant was not one of them.

4. On 22 August 2006, the appellant started judicial review proceedings challenging the lawfulness of the decision not to include him on the list for promotion. Like the appellants in *Ganga*, he claimed that the Commissioner had acted unlawfully, inter alia, in devising a scheme (the points-based system) which was unfair, illegal and unreasonable. Unlike the appellants in *Ganga*, he also claimed that the Commission had acted unlawfully. But the lawfulness of the points-based system was at the heart of the proceedings.

5. On 12 April 2007, before the date for trial, the Commission reconsidered the appellant's application for promotion and revised his performance appraisal from "very good" to "outstanding". This meant that he received total marks of 76 which entitled him to be promoted to the rank of corporal with retrospective effect from 11 May 2006. The reason for the alteration was that his previous performance appraisal had covered only one month in the year (November to December 2003). After he pointed this out in his first affidavit which was filed in August 2006, the appellant was

told by senior officers that they now accepted that he had not been properly assessed. Notwithstanding his reassessment and promotion, the appellant continued with these proceedings on the grounds that the lawfulness of the points-based system was a matter of general importance.

6. On the question of the lawfulness of the system, the parties raised many of the points that were raised in *Ganga*. In particular, the appellant raised the same detailed criticisms of the rationality and fairness of the system in both proceedings. The main difference between the two cases was that in *Ganga* the challenge was directed to the Commissioner's recommendations, whereas in these proceedings there was also a challenge to the Commission's decision not to promote the appellant.

7. Best J held that the points-based system was unreasonable and contrary to natural justice. The Court of Appeal (I Archie CJ, M Warner JA and N Bereaux JA) allowed the appeal of the Commission and the Commissioner. They held that, since the appellant's marks had been based on a performance appraisal of just one month, it was unfair. But the unfairness had been corrected with effect from 11 May 2006. As regards the points-based system, following the court's decision in *Ganga*, they held that the judge had been wrong to find that it was irrational or that it had been applied inflexibly.

8. The only evidence to which it is necessary to refer is contained in the affidavit of Gloria Edwards-Joseph sworn on 1 December 2006. She is the Director of Public Administration at the Commission. She explains that the procedure followed by the Commission in making its decision whether or not to promote the appellant was based on regulation 20 of the Police Service Commission Regulations ("the Regulations"). As regards the points-based system, she says that "the procedure agreed upon is fair, unbiased, flexible and not unreasonable". As the Court of Appeal pointed out (para 26 of the judgment of Bereaux JA), the judge's criticism that the system was inflexibly applied to the appellant was not supported by the evidence. And at para 30, he made the point that the process of making written representations pursuant to regulation 15(3) of the Regulations was "an important part of the process for correcting imbalances inherent in the system".

9. Mr Richards relies on the submissions that he made in *Ganga*. These must be rejected in this appeal substantially for the reasons given by the Board in its judgment in that case. It is true that in the present case the appellant is aiming at the right target, namely the decision of the Commission. But for the reasons given by the Board at paras 22 to 28 of its judgment in *Ganga*, the points-based system, flawed though it might be in some respects as the Court of Appeal suggested in *Ganga*, is not irrational and does not entail any procedural unfairness. The fact that disappointed officers are given the opportunity to make representations is sufficient to meet any argument of procedural unfairness. The Commission has shown that the points-based system is not

a straight-jacket. Gloria Edwards-Joseph has deposed that it is applied flexibly and her evidence has not been challenged. Moreover, the fact that the points-based system has evolved over time as weaknesses in it have been exposed shows that what she says is correct. Further, the facts of the present case show that cases are reconsidered in the light of representations made by the individuals concerned. There is no basis for the Board to overturn the conclusion of the Court of Appeal on this (or indeed any other) aspect of the case.

10. For these reasons, this appeal must be dismissed.