NOT REPORTABLE/DISTRIBUTABLE

(1) POLICE SERVICE COMMISSION (2) THE COMMISSIONER GENERAL OF POLICE
v
DHERERAI MANYONI

SUPREME COURT OF ZIMBABWE
GUVAVA JA, UCHENA JA & KUDYA AJA
HARARE: 28 MAY 2021

D. Jaricha, for the appellants

Respondent in person

GUVAVA JA:

1. This is an appeal against part of a judgment of the High Court dated 17 July, 2019 in which the court *a quo* set aside the respondents dismissal from the police service commission and ordered his reinstatement without loss of salary and benefits.

2. After hearing submissions from both the appellants' counsel and the respondent we gave an *ex tempore* judgment and made the following order:

> "1. Accordingly, the appeal succeeds with no order as to costs.
> 2. The decision of the court *a quo* is set aside and substituted with the following:
>
> "(a) The appeal by the respondent to the Police Service Commission is upheld.
> (b) The decision of the Police Service Commission is hereby set aside.
> (c) The matter is remitted to the Police Service Commission for a hearing *de novo*.
> (d) There shall be no order as to costs.""

3. The respondent has requested written reasons. These are they:

BACKGROUND FACTS

4. The first respondent is a Commission established in terms of s 221(1) of the Constitution. Its mandate, amongst others, is to fix and regulate the affairs of the members of the Police Service Commission.

   The respondent was a member of the Zimbabwe Republic Police. Before his discharge from the service, he was stationed at Rose Camp in Bulawayo.

   On 28 December 2015, the respondent was discharged from employment. The respondent alleges that his discharge was not in accordance with the Police Act as he was not informed of the charge preferred against him nor was a Board convened to enquire into the merits of the matter.

   It was on these allegations that he approached the court *a quo* seeking a review of the proceedings that led to his discharge. He prayed for the setting aside of his discharge and reinstatement without loss of salary and benefits.

5. The court *a quo* found that there were procedural irregularities as the respondent was not given an opportunity to be heard. It was on that basis that the court *a quo* ordered the respondent's reinstatement.

6. Aggrieved by the order granted *a quo* the appellants appealed to this Court. The main gripe of the appellants was that the court *a quo* erred in ordering the reinstatement of the

respondent when there was no evidence of malice or bias towards the respondent and no evidence to show that the respondent had been improperly discharged.

7. In the court's view the crisp issue that presents itself is whether or not the order of the court *a quo* was competent.

THE LAW

8. The law relating to reviews in terms of the High Court Act [*Chapter 7:06*] and the Rules of that court is settled. The application for review must be made within 8 weeks of the decision and on such grounds as are set out in s 27 of the High Court Act.

9. Section 28 of the High Court Act provides for the powers that the court is imbued. It reads:

> "on a review of any proceedings or decision other than criminal proceedings, the High Court may, subject to any other law set aside or correct the proceedings or decision."

APPLICATION OF THE LAW TO THE FACTS

10. It is trite and this appears clearly from the above cited provisions that in an application for review the court must confine itself to establishing whether or not the proceedings were afflicted with irregularities.

Once it found, as it did in this case, that there were irregularities in the process in which the appellants discharged the respondent then its power should have been exercised in terms of s 27 of the High Court Act.

As set out above, s 28 provides that the High Court can only set aside or correct the proceedings or decision complained of. The High Court has no power to order the re instatement of a person if a matter is brought on review.

11. This was clearly stated in *Standard Chartered Bank of Zimbabwe Ltd v J. Chikomwe* and 211 Ors s 77 – 2000.

> "This is because reinstating the respondents in the circumstances implies a finding that the respondents were innocent of the charges of misconduct against them by the hearing officer. It should be borne in mind that the respondent in their appeal to the Appeals Board were mainly challenging the procedural irregularities in the hearings before the disciplinary Committee. The merits of the case were not really challenge……"

See also *Air Zimbabwe Ltd v Mensah* SC 89/04.

So too, in this case, the respondent was not happy with the manner in which his matter was handled. It was his case that there was no Suitability Board which was convened neither was he called to answer to any charges.

12. The court *a quo* agreed with him but then ordered his reinstatement. Clearly this was *ultra vires* the powers of the court where it finds an irregularity. Its powers are limited to setting aside, or correcting the decision of the Tribunal.

As the matter is not an appeal on the merits the court *a quo* would not have had the power to set aside the decision of the Police Service Commission and substitute it with its own decision.

13. It was not in dispute that the record of the suitability Board was not before this Court. There was no valid explanation as to why it was not part of the record as it is in dispute

whether or not the record was placed before the Police Service Commission or before the court *a quo*.

14. In view of these irregularities and the fact that these documents do not appear to have been placed before the court *a quo* the proper relief should have been the setting aside of the decision of the first appellant, and a remittal of the matter so that it can be determined following the proper procedures.

DISPOSITION

15. It was for the above reasons that we issued the order set out at the beginning of this judgment.

UCHENA JA: I agree

KUDYA AJA: I agree

Civil Division of the Attorney General's Office, appellant's legal practitioners