

**Attorney General of Antigua and Barbuda and Others
v. Cuthwin Lennard Lake (Antigua and Barbuda)
[1998] UKPC 41 (8th October, 1998)**

Privy Council Appeal No. 58 of 1997

(1) The Attorney General of Antigua and Barbuda

(2) The Public Service Commission for Antigua and Barbuda

(3) The Honourable Lester Bryant Bird and

(4) The Chief Establishment Officer *Appellants*

v.

Cuthwin Lennard Lake *Respondent*

FROM

**THE COURT OF APPEAL OF ANTIGUA
AND BARBUDA**

REASONS FOR REPORT OF THE LORDS
OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL OF THE 20th July 1998,

Delivered the 8th October 1998

Present at the hearing:-

Lord Lloyd of Berwick

Lord Nicholls of Birkenhead

Lord Hope of Craighead

Lord Clyde

Lord Hutton

*·[Delivered by **Lord Hutton**]*

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1. On 20th July 1998 their Lordships agreed humbly to advise Her Majesty that the appeal should be dismissed and that the appellants should pay the costs of the appeal and that they would deliver their reasons later. This they now do.

2. In April 1994 Mr. Cuthwin Lennard Lake C.B.E., F.R.C.S. (whom their Lordships will call “Dr. Lake”), was the Medical Superintendent of Holberton Hospital in Antigua. He claims that in the course of that month he was removed from that position. In November 1994 Dr. Lake brought a motion in the High Court against the four appellants, the Attorney-General of Antigua and Barbuda, the Public Service Commission for Antigua and Barbuda, the Honourable **Lester Bryant Bird**, the Prime Minister of Antigua and Barbuda, and the Chief Establishment Officer, in which he claimed a declaration that his removal from his duties as the Medical Superintendent of Holberton Hospital by the second-named and third-named appellants was an infringement of his constitutional rights, and he claimed further declarations giving effect to his constitutional rights. Dr. Lake also claimed a declaration that the third-named appellant, the Honourable **Lester Bryant Bird** had been guilty of misfeasance in public office in relation to him and damages against the first and second-named appellants and damages and exemplary damages against the third named appellant.

3. Dr. Lake's motion was listed for hearing before Benjamin J. on 20th February 1995. Prior to the hearing of the motion the appellants applied to the High Court for a ruling that the court had no jurisdiction to embark on the hearing of the motion on the ground that the facts alleged by the applicant (if proved) did not constitute a breach of his constitutional rights or give rise to remedies under the Constitution. After full argument Benjamin J. dismissed the appellants' application and held that Dr. Lake's motion gave rise to issues under the Constitution which the High Court had jurisdiction to entertain. The appellants appealed to the Court of Appeal, and the Court of Appeal dismissed the appeal and upheld the order of Benjamin J. The appellants now appeal to this Board, with special leave, against the decision of the Court of Appeal.

The relevant provisions of the Constitution of Antigua and Barbuda

4. The relevant provisions of Chapter II are as follows:-

“14....

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting by virtue of any law or in the performance of the functions of any public office or any public authority.

(3) In this section, the expression ‘discriminatory’ means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions or affiliations, colour, creed, or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.”

“18.-(1) If any person alleges that any of the provisions of sections 3 to 17 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him (or, in the case of a person who is detained, if any other person alleges such a contravention in relation to the detained person), then, without prejudice to any other action with respect to the same matter that is lawfully available, that person (or that other person) may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction –

(a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; ...

and may make such declaration and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 3 to 17 (inclusive) of this Constitution:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law.”

5. The relevant provisions of Chapter VII under the heading “The Public Service” are as follows:-

“99.-(1) There shall be a Public Service Commission for Antigua and Barbuda (hereinafter in this section referred to as the Commission) which shall consist of a chairman and not less than two nor more than six other members who shall be appointed by the Governor-General, acting in accordance with the advice of the Prime Minister:

Provided that the Prime Minister shall consult the Leader of the Opposition before tendering any advice to the Governor-General for the purposes of this subsection.

...

(11) The Commission shall, in the exercise of its functions under this Constitution, not be subject to the direction or control of any other person or authority.”

“100.-(1) Subject to the provisions of this Constitution, the power to appoint persons to hold or act in offices in the public service (including the power to make appointments on promotion and transfer and to confirm appointments), the power to exercise disciplinary

control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Public Service Commission.

...

(6) In the performance of its functions the Public Service Commission shall act in a manner consistent with the general policy of the Government as conveyed to the Commission by the Prime Minister in writing.”

“101.-(1) This section applies to the offices of Secretary to the Cabinet, Permanent Secretary, head of a department of government, deputy head of a department of government, any office for the time being designated by the Public Service Commission as an office of a chief professional adviser to a department of government and any office for the time being designated by the Commission, after consultation with the Prime Minister, as an office the holders of which are required to reside outside Antigua and Barbuda for the proper discharge of their functions or as an office in Antigua and Barbuda whose functions relate to external affairs.

(2) The power to appoint persons to hold or to act in offices to which this section applies (including the power to confirm appointments), and, subject to the provisions of section 107 of this Constitution, the power to exercise disciplinary control over persons holding or acting in such offices and the power to remove such persons from office shall vest in the Governor-General, acting in accordance with the advice of the Public Service Commission:

6. Provided that -

(b) before the Public Service Commission tenders advice to the Governor-General with respect to the appointment of any person to hold an office to which this section applies (other than appointment to an office of permanent secretary on transfer from another such office carrying the same salary) it shall consult with the Prime Minister and if the Prime Minister signifies his objection to the appointment of any person to the office, the Commission shall not advise the Governor-General to appoint that person;”

7. The relevant provisions of Chapter IX are as follows:-

“119.-(1) Subject to the provisions of sections 25(2), 47(8)(b), 56(4), 65(5), 123(7)(b) and 124 of this Constitution, any person who alleges that any provision of this Constitution (other than a provision of Chapter II) has been or is being contravened may, if he has a relevant interest, apply to the High Court for a declaration and for relief under this section.

(2) The High Court shall have jurisdiction on an application made under this section to determine whether any provision of this Constitution (other than a provision of Chapter II) has been or is being contravened and to make a declaration accordingly.

(3) Where the High Court makes a declaration under this section that a provision of this Constitution has been or is being contravened and the person on whose application the declaration is made has also applied for relief, the High Court may grant to that person such remedy as it considers appropriate, being a remedy available generally under any law in proceedings in the High Court.

...

(5) A person shall be regarded as having a relevant interest for the purpose of an application under this section only if the contravention of this Constitution alleged by him is such as to affect his interests.

(6) The rights conferred on a person by this section to apply for a declaration and relief in respect of an alleged contravention of this Constitution shall be in addition to any other action in respect of the same matter that may be available to that person under any other law or any rule of law.”

The facts relied on by Dr. Lake

8. No witnesses were heard or cross-examined before the High Court and the High Court and the Court of Appeal considered the question whether Dr. Lake’s motion raised constitutional issues on the basis that the facts alleged by him were true. In summary the

facts relied on by Dr. Lake are as follows. On 1st December 1967 he was appointed a Surgeon Specialist at the Holberton Hospital and, with the exception of a break between 1975 to 1976, worked continuously at the hospital until April 1994. The position of Medical Superintendent of the Holberton Hospital is a statutory one and section 4(1) of the Medical and Holberton Institution Act provides:-

“It shall be lawful for the Public Service Commission to appoint some duly qualified medical practitioner to be Medical Superintendent of the Holberton Institution.”

9. By a letter dated 25th September 1987 Dr. Lake was informed by the Chief Establishment Officer that the Public Service Commission had approved his appointment as Medical Superintendent of Holberton Hospital with effect from 1st January 1988. Thereafter Dr. Lake worked as Medical Superintendent and his appointment was informally renewed from time to time, but on 22nd March 1994 there was a formal reappointment of Dr. Lake to that position when the Chief Establishment Officer wrote to the Permanent Secretary, Ministry of Health and Home Affairs, stating:-

“ Contract of Service - Mr. Cuthwin Lake

Medical Superintendent - Holberton Hospital

10. Further to my minute of even number dated 3rd March, 1994, on the above subject, I am to inform you that the Public Service Commission has approved the re-employment of Mr. Cuthwin Lake as Medical Superintendent, Holberton Hospital on contractual basis for five (5) years with effect from 9th January, 1990.

11. I should be grateful to receive an early reply to paragraph 2 of my minute under reference regarding the duration of the second contract in favour of Mr. Lake.”

12. Therefore Dr. Lake claims that in April 1994 he held a formal appointment as Medical Superintendent of the Holberton Hospital made by the Public Service Commission, and this appointment was not due to expire until 9th January 1995. He claims that he had also made it clear that he intended to apply for a renewal of his appointment at the termination of the five year term.

13. In his affidavit filed in support of his motion Dr. Lake avers:-

“14. On the 8th March, 1994, General Elections were held in Antigua and Barbuda, and the Antigua Labour Party led by the Honourable **Lester Bryant Bird** was returned to Office. The Honourable **Lester Bryant Bird** became Prime Minister of Antigua and Barbuda, and within the new Cabinet structure The Honourable Hilroy Humphreys was appointed Minister of Health and Home Affairs in whose portfolio the Holberton Hospital is housed.

15. Shortly after the constitution of the New Cabinet, the Honourable Minister of Health toured the institution the exact date of which said tour I cannot now recall. However, during the tour the question of the transfer of the Administrator of Holberton Hospital was raised. The Honourable Minister intimated that he had not heard of the transfer but said he, ‘But I know for sure that the Prime Minister is bent on replacing you with Dr. John, come what may’.

16. On the 14th day of April, 1994, I was in the Operating Theatre performing an operation upon a patient when I needed the assistance of my assistant Dr. Kiwomya, but he was not present, and could not be found. Later, that day he came to the Operating Theatre and I inquired from him concerning his whereabouts when I needed him, and he and others with him informed me that they had been summoned to a meeting by Dr. Joseph John, a Surgeon at the hospital who introduced himself to them as the new Medical Superintendent of the Holberton Hospital. I am informed by other members of staff and verily believe that he held other meetings of staff in my office on that day in his purported capacity of Medical Superintendent of Holberton Hospital.

17. No one from the Public Service Commission, The Establishment Department or the Ministry of Health or at all had informed me that I had been relieved of my duties as Medical Superintendent of the said Holberton Hospital.

18. On the 15th day of April, 1994, The Honourable Minister of Health came to my home at the Factory and indicated to me and my household that he could not get the Prime Minister to see reason, and he made it clear that I was not to return to the Hospital either as Medical Superintendent or Surgeon Specialist. He expressed the hope that I would be able to work as adviser, but was firm in his position that the Hospital was closed to me.

19. I thereupon informed the Honourable Minister of Health that I would look into the matter and went to the Hospital only to discover that Dr. Joseph John had moved into my office, which, for decency for the institution, I was obliged to vacate.

20. I was shocked that my professional services as a Contract Civil Servant could be disposed of in this way in a democratic constitutional society. The circumstances seemed unreal to me until on the 19th day of April, 1994, a copy of a letter dated the 15th day of April, 1994, under the hand of the said Honourable Minister of Health and directed to the Permanent Secretary, Ministry of Health was hand delivered to me. A copy of that letter is exhibited hereto and marked 'CLL 6'. By that letter the Honourable Minister advised the Permanent Secretary that I was proceeding on leave when in fact I had applied for no such leave."

14. On the instructions of Dr. Lake his solicitors Messrs. Lake & Kentish wrote to the Minister of Health on 20th April 1994 protesting at what had occurred and stating:-

"Dr. Lake has instructed us to advise you that he has noted the fact that Dr. Joseph John is now the effective Medical Superintendent at Holberton with effect from the 15th April, 1994.

15. Our client wishes to set your record straight in that Dr. Lake is not on leave, did not proceed on any leave, and in fact never applied for any leave.

16. Dr. Lake was the substantive holder of the post under a contract of employment, expiry date of which is the 9th January, 1995, with an option for renewal for a further term thereafter.

17. Dr. Lake has noted that Dr. John commenced his preparatory arrangements to assume the post of Medical Superintendent since as early as the 10th April, 1994, without any intimation to Dr. Lake by the relevant authority that his services were to be terminated.

18. Dr. Lake is a responsible surgeon who has served Antigua and Barbuda with due diligence, competence and sacrifice for upwards of twenty-seven (27) years. If he had applied for leave he would have done so in the appropriate and customary manner which included a requirement for him to make a recommendation for the acting appointment during his leave of absence.

19. This method of leave was not invoked for the simple reason that it was not initiated by Dr. Lake but rather by you Mr. Minister, as a method of terminating Dr. Lake's contract of employment. That it was a ploy orchestrated to terminate his contract, is evidenced by the fact that while you were despatching Dr. Lake on leave, you were at the same time purporting to appoint Dr. Lake to serve as a member of a Committee to review and evaluate the operations of the University of Health Sciences.

20. Dr. Lake has noted also that Dr. John has assumed the duties and functions of Medical Superintendent since the 15th April, 1994. Your letter is efficacious confirmation of the effective assumption by Dr. John of the post of Medical Superintendent.

21. Our instructions are to assure you that our client holds himself bound by your termination of his services, and seeks only prompt payment of all that is due to him by way of his gratuity, pension and interest thereon for his pensionable service, together with compensation and for the wrongful termination of his contract of employment and the manner in which termination has been effected.

22. It is regrettable that years of service could not have inspired a greater sense of decency in your Ministry in effecting a change of personnel so burningly desired by the new administration. It is regrettable also, that your Ministry could not appreciate that your course of conduct does not accord with the principles of good governance which your administration has espoused as its lodestar but to which it appears you are only prepared to pay lip service.

23. Our instructions are to advise you that our client expects prompt, fair and complete settlement of his outstanding entitlements, if a pursuit for constitutional and legal redress by him for the wrongful and embarrassing termination of his employment is to be avoided."

24. On 20th April 1994 Messrs. Lake & Kentish also wrote to the Chairman of the Public Service Commission informing him of what had happened. The letter concluded as follows:-

“You must appreciate that this is a clear breach of the terms of Dr. Lake’s contract and a clear violation of the rules and principles applicable to the employment which he held.

25. We would like to have the opportunity formally to address you the constitutional body, upon this matter, in order to ensure that Dr. Lake’s rights arising upon the indecent and embarrassing termination of his employment are not prejudiced.

26. We look forward to hearing from you in that regard.”

27. On 25th April 1994 the Minister of Health replied to Messrs. Lake & Kentish stating that Dr. Lake’s appointment as Medical Superintendent had not been terminated and that Dr. Joseph John had not been appointed to the position. The letter further stated that the Ministry of Health had understood that Dr. Lake was going on leave and that Dr. John had been appointed as acting Medical Superintendent whilst Dr. Lake was on leave, but that when Dr. Lake informed the Ministry that he was not going on leave Dr. John’s appointment as acting Medical Superintendent was never implemented.

28. On 27th April 1994 Messrs. Lake & Kentish wrote to the Minister of Health stating that his assertions that Dr. Lake agreed to proceed on leave could not bear scrutiny, and further informing him that the matter of Dr. Lake’s employment was already formally before the Public Service Commission.

29. On 4th May 1994 the Public Service Commission replied to the letter from Messrs. Lake & Kentish dated 20th April and stated:-

“Please be informed that the Public Service Commission is inquiring into the matter and you will be advised of the outcome.”

30. On 24th May 1994 Messrs. Lake & Kentish wrote to the Chairman of the Public Service Commission renewing their request for an opportunity to meet him at the very earliest convenient time, and also stating that they regarded the request as a matter of urgency. On 30th May 1994 the Public Service Commission replied to Messrs. Lake & Kentish stating:-

“Please be informed that the Commission is still considering the issues raised in your letter, and will revert to you soonest.”

31. On 9th June 1994 the third named appellant, the Prime Minister, wrote to the Chairman of the Public Service Commission as follows:-

“ Re - Appointment of Dr. Joseph John

Medical Superintendent, Holberton Hospital

32. This serves to inform you that I as Prime Minister, did instruct Dr. Joseph John to act as Medical Superintendent at the Holberton Hospital effective April 15, 1994.

33. I further instructed him to act in that capacity until his contract as Medical Superintendent is signed.

34. The Government of Antigua and Barbuda accepts full responsibility and any legal liabilities that may arise from this matter.

35. I recommend that the Public Service Commission confirms this appointment without delay.”

36. On 27th October 1994 the fourth named appellant, the Chief Establishment Officer, wrote to Dr. Joseph John as follows:-

“I am to inform you that consequent upon your appointment by His Excellency the Governor-General to act as Medical Superintendent, Holberton Hospital with effect from 24th May, 1994, and until further notice, you will be employed on the following terms and conditions which are personal to you.”

37. The letter then set out the terms and conditions of Dr. John’s employment.

38. In his affidavit Dr. Lake further avers that prior to 1992 he and the third named appellant had been on friendly terms, but that during that year he had indicated to him that he had shown a lack of loyalty to his father, who was then the Prime Minister, and to his brother who was also a politician. In addition in 1992 when the third named appellant’s father became ill and he was called to act as his doctor, the third named appellant took him aside and asked him to send his father abroad for rest, recuperation and attention, and to certify him as not being competent to continue to hold the office of Prime Minister of Antigua and Barbuda but he declined to accede to this request. Dr. Lake then states in paragraph 34 of his affidavit:-

“Towards mid 1993, the Antigua Labour Party held its Primary Election for St. John’s Rural North; at its conclusion the candidate who was supported by the said **Lester Bryant Bird** lost to the candidate whom I favoured. Shortly, thereafter, the said **Lester Bryant Bird** met me in the vicinity of the State Insurance Building at Redcliffe Street, St. Johns and stated, that he would deal with me.

39. In fact in or about the month of September, 1993, shortly after the second race for the Leadership of the Antigua Labour Party concluded with his election as leader thereof, an incident occurred between the Honourable **Lester Bryant Bird** and me during which he vowed and declared that he would never forget or forgive me.”

The relief claimed by Dr. Lake

40. In his notice of motion Dr. Lake claimed the following relief:-

“1.A Declaration that the removal of the Applicant from his duties of Medical Superintendent at Holberton Hospital by the Second-named and Third-named Respondents is an infringement of the constitutional rights of the Applicant.

2.A Declaration that the Applicant’s contract of employment in the Public Service as Medical Superintendent, Holberton Hospital commencing 9th day of January, 1990, and determining 8th January, 1995, has been wrongfully determined by the Second-named Respondent in its advisory role to the Governor General of Antigua and Barbuda as provided in Section 101(2) of the Antigua and Barbuda Constitution Order 1981 in circumstances which amount to a breach of the rules of natural justice.

3.A Declaration that the said Second-named Respondent in the exercise of its constitutional powers, under the said Section 101, acted under the direction and control of the Third-named respondent in contravention of the provisions therein contained in relation to the termination of the Applicant’s contract of employment.

4.A Declaration that the Applicant was and is entitled to the legitimate expectation to have the said contract renewed for a further period of five (5) years upon the determination of the original term of the said contract of employment.

5.A Declaration that the direction of the Honourable Minister of Health by letter dated 15th April, 1994 as follows:-

‘Please be advised that Dr. Cuthwin Lake is proceeding on vacation leave 15th April, 1994 to 30th April, 1994. Please be further advised that Dr. Joseph John will be assuming the position as Acting Medical Superintendent with effect 15th April, 1994’ .is a nullity.

6.A Declaration that the directive of the Fourth-named Respondent that the Applicant proceed on leave on the 24th May, 1994 contained in a letter dated 16th May, 1994 is invalid and a nullity at law.

7.A Declaration that the Third-named Respondent is guilty of misfeasance in public office in relation to the Applicant.

8.Damages against the First and Second-named Respondents.

9.Damages and Exemplary damages against the Third-named Respondent.

10.Costs.

11.Such further or other relief as to the Court may seem just.”

41. The notice of motion did not refer to the sections of the Constitution which the applicant alleged had been breached, but it was made clear in the course of the applicant’s submissions to Benjamin J. that he was alleging breaches of sections 14(2), 99(11) and 100 or 101 of the Constitution and that his right to bring a claim for constitutional relief to the High Court arose under sections 18 and 119 of the Constitution. Benjamin J. ruled that the applicant’s claims were not barred by reason of his failure to state specifically in his notice of motion the sections of the Constitution which he alleged had been breached, and the appellants do not challenge that ruling on their appeal to the Board.

The effect of the relevant sections of Chapter VII of the Constitution

42. In April 1994 Dr. Lake held an office in the public service. Section 100 provided that the power to remove him from that office was vested in the Public Service Commission, and the power to appoint another person to that office in his place was also vested in the Public Service Commission. Moreover section 99(11) provided that in the exercise of its functions under the Constitution the Public Service Commission should not be subject to the direction or control of any other person or authority. The purpose of these provisions is to protect public servants from political pressure and from the effects of political patronage. Referring to similar provisions in the Constitution of Trinidad and Tobago in delivering the judgment of the Board in *(Endell) Thomas v. Attorney- General of Trinidad and Tobago* [1982] A.C. 113, 123F-H and 124B-D Lord Diplock stated:-

“Under a party system of government such as exists in Trinidad and Tobago and was expected to exist after independence in other Commonwealth countries whose constitutions followed the Westminster model, dismissal at pleasure would make it possible to operate what in the United States at one time became known as the ‘spoils’ system upon a change of government, and would even enable a government, composed of the leaders of the political party that happened to be in power, to dismiss all members of the public service who were not members of the ruling party and prepared to treat the

proper performance of their public duties as subordinate to the furtherance of that party's political aims. ...

43. The whole purpose of chapter VIII of the Constitution which bears the rubric 'The Public Service' is to insulate members of the civil service, the teaching service and the police service in Trinidad and Tobago from political influence exercised directly upon them by the government of the day. The means adopted for doing this was to vest in autonomous commissions, to the exclusion of any other person or authority, power to make appointments to the relevant service, promotions and transfers within the service and power to remove and exercise disciplinary control over members of the service."

44. Having regard to the facts alleged by Dr. Lake it would appear on first impression that he could advance a case of considerable strength that there had been breaches of section 99(11) and section 100 of the Constitution. His case was that he had been removed from office and that Dr. John had been appointed in his place, not by the Public Service Commission, but by the direct action of the Prime Minister on or prior to 15th April 1994, as stated in the letter from the Prime Minister to the Chairman of the Public Service Commission dated 9th June 1994. Therefore there had been a direct breach of section 100. In addition, there had been a breach of section 99(11) because the Public Service Commission had permitted itself to be subject to the direction of the Prime Minister. This argument was accepted by the High Court and by the Court of Appeal as raising constitutional issues which the High Court should hear and determine.

The case on behalf of the appellants

45. Before the Board counsel for the appellants advanced a number of submissions in support of the contention that Dr. Lake was not entitled to claim constitutional relief in respect of a breach of section 99(11) or section 100, and their Lordships now turn to consider those submissions.

46. One submission was that although Dr. Lake had been appointed to his position by the Public Service Commission, his contract of employment had been made with the Government. Therefore, if Dr. Lake had been removed from his position in April 1994 instead of merely going on an accrued period of leave to which he had become entitled until his contract expired on 9th January 1995 as the appellants had claimed, such removal was nothing to do with the Public Service Commission but was a breach of contract by the Government. Dr. Lake would have been entitled to recover damages at common law for this breach of contract, but it did not constitute a breach of a

constitutional right and did not entitle Dr. Lake to obtain a constitutional remedy. This submission was supported by the argument that if the removal of Dr. Lake constituted a breach of section 99(11) or section 100, then whenever there was a dispute between a civil servant and the Government as to a change in his conditions of service, and the civil servant was entitled to regard the change as a repudiatory breach of his contract of employment by the Government, the civil servant would be able to claim a constitutional remedy for a breach of section 99(11) or section 100.

47. Their Lordships do not accept this submission. If the facts alleged by Dr. Lake are established, those facts will show that he was removed from his position by the Prime Minister in a way which was intentional, direct and effective. Therefore there is clearly a prima facie case that there was a breach of section 100, which provides that the power to remove a person from public office is vested in the Public Service Commission. The case raised by the appellants of a civil servant, after dispute about changes in his conditions of service, accepting a repudiatory breach by the Government, is far removed from the facts of the present case and is clearly distinguishable, and their Lordships express no opinion on the question whether such a termination of contract after a dispute about conditions of service could give rise to a claim for a breach of the Constitution.

48. On the facts alleged by Dr. Lake there is also clearly a prima facie case that there was a breach of section 99(11) because the letter dated 9th June 1994 from the Prime Minister to the Public Service Commission, stating that he had instructed Dr. John to act as a Medical Superintendent at the Holberton Hospital with effect from 15th April 1994 and recommending that the Commission confirm this appointment without delay, made the Commission subject to the direction of the Prime Minister, and the letter went far beyond conveying to the Commission the general policy of the Government as permitted by section 100(6). Their Lordships further observe that they consider that the office of Medical Superintendent of the Holberton Hospital held by Dr. Lake was governed by the provisions of section 100 and not by the provisions of section 101. But even if this office were governed by section 101, Dr. Lake would have a similar argument that there had been a breach of section 101 and of section 99(11), because in appointing a person to, or removing a person from, an appointment to which section 101 applied, the Governor-General must act in accordance with the advice of the Public Service Commission.

49. It was further argued in the alternative on behalf of the appellants that as the only body empowered by section 100 to remove Dr. Lake from office was the Public Service Commission and as the Commission had not removed or purported to remove him from office in April or May, Dr. Lake had not been effectively removed from office and still held his position as Medical Superintendent in April and May, and could have applied to the High Court under the common law for a declaration to this effect, and consequently

he had not suffered a breach of his constitutional rights and was not entitled to constitutional relief.

50. Their Lordships do not accept this submission because, if the facts alleged by Dr. Lake are true, they show that he was removed from his position in fact, and not merely in some artificial or theoretical way, because from 14th April 1994 Dr. John was occupying Dr. Lake's office in the hospital and acting as the Medical Superintendent of the hospital. Moreover Dr. Lake states that on 15th April the Minister of Health came to his home and told him that he could not get the Prime Minister to see reason and further told him that he was not to return to the hospital and that the hospital was closed to him. In those circumstances their Lordships consider that Dr. Lake was fully entitled to act on the basis that he had been removed from his office as Medical Superintendent, and that it would have been unrealistic for him to claim to be restored to that office on the basis that he still held it.

51. The appellants further submitted that by reason of the terms of his solicitors' letter dated 20th April 1994 to the Minister of Health Dr. Lake had waived his right to obtain constitutional relief. The appellants relied on the two following passages in the letter:-

“Our instructions are to assure you that our client holds himself bound by your termination of his services, and seeks only prompt payment of all that is due to him by way of his gratuity, pension and interest thereon for his pensionable service, together with compensation for the wrongful termination of his contract of employment and the manner in which termination has been effected.

...

52. Our instructions are to advise you that our client expects prompt, fair and complete settlement of his outstanding entitlements, if a pursuit for constitutional and legal redress by him for the wrongful and embarrassing termination of his employment is to be avoided.”

53. The appellants argued that Dr. Lake had accepted the termination of his services, and that accordingly he had waived his claim to constitutional relief and could only claim damages at common law. Their Lordships do not accept this argument because, as counsel for Dr. Lake submitted, the reference to compensation for the manner in which

the termination had been effected made it clear that Dr. Lake was not restricting his claim to damages for breach of contract. In addition in the last sentence of the letter the solicitors reserved Dr. Lake's right to pursue constitutional redress if there was not prompt, fair and complete settlement of his outstanding entitlements, and Dr. Lake can contend that after receipt of this letter the Government still persisted in treating him unfairly because, notwithstanding the manner in which Dr. John had taken over the position of Medical Superintendent on 14th or 15th April on the instructions of the Prime Minister (as evidenced by the latter's letter dated 9th June to the Public Service Commission), the Minister of Health wrote to Dr. Lake's solicitors on 25th April stating:-

“It must be made clear from the onset that the services of your client as Medical Superintendent has not been terminated, and Dr. Joseph John has not been appointed to the position ... Your client is to be advised, therefore, that his services as Medical Superintendent of Holberton Hospital has not been terminated and if and when a decision is taken to that effect, the termination will be done in a manner consistent with good industrial and labour relations practices and the law.”

54. The appellants further submitted that Dr. Lake was not entitled to constitutional relief because he could receive adequate redress by remedies under the common law. The appellants also relied on the judgment of the Board in *Harrikissoon v. Attorney-General of Trinidad and Tobago* [1980] A.C. 265, 268B-G where Lord Diplock stated:-

“The notion that whenever there is a failure by an organ of government or a public authority or public officer to comply with the law this necessarily entails the contravention of some human right or fundamental freedom guaranteed to individuals by Chapter I of the Constitution is fallacious. The right to apply to the High Court under section 6 of the Constitution for redress when any human right or fundamental freedom is or is likely to be contravened, is an important safeguard of those rights and freedoms; but its value will be diminished if it is allowed to be misused as a general substitute for the normal procedures for invoking judicial control of administrative action. In an originating application to the High Court under section 6(1), the mere allegation that a human right or fundamental freedom of the applicant has been or is likely to be contravened is not of itself sufficient to entitle the applicant to invoke the jurisdiction of the court under the subsection if it is apparent that the allegation is frivolous or vexatious or an abuse of the process of the court as being made solely for the purpose of avoiding the necessity of applying in the normal way for the appropriate judicial remedy for unlawful administrative action which involves no contravention of any human right or fundamental freedom.

The instant case concerns and concerns only the right of a holder of a public office not to be transferred against his will from one place to another. In their Lordships' view it is manifest that this is not included among the human rights and fundamental freedoms specified in Chapter I of the Constitution.

The suggestion made on behalf of the appellant that it constitutes 'property' within the meaning of section 1(a), viz:

'the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law'

needs only to be stated to be rejected. "

55. Their Lordships do not accept these submissions as sections 99 and 100 are contained in Chapter VII of the Constitution, and section 119(6) provides in relation to an application for a declaration and relief in respect of a contravention of a provision of the Constitution (other than a provision of Chapter II) that the right to apply for such a declaration and relief "shall be in addition to any other action in respect of the same matter that may be available to that person under any other law or any rule of law". The case of *Harrikissoon* is distinguishable from the present case because in it the Board was considering a claim by a teacher that his transfer from one school to another constituted a breach of his fundamental rights under Chapter I of the Constitution. As Lord Diplock stated, it was manifest that such a right was not included among the human rights and fundamental freedoms specified in Chapter I of the Constitution of Trinidad and Tobago, whereas in the present case the applicant claims a breach of a specific provision in Chapter VII of the Constitution designed to protect those who, like him, were appointed to public office, and having regard to the facts alleged by Dr. Lake there can be no substance in an argument that his claim for constitutional relief is frivolous or vexatious or an abuse of the process of the court.

The claim of discrimination

56. In addition to breaches of sections 99(11) and 100 Dr. Lake claimed that his removal from his position constituted discrimination by reason of his political opinions or affiliations contrary to section 14(2) and (3) of the Constitution. The appellants submitted that if, on the facts alleged by Dr. Lake, he had been subjected to discrimination by the Government or the Prime Minister, there was no validity in his claim that his political opinions or affiliations had caused the discrimination, but rather that the discrimination was attributable to the personal animosity felt by the Prime Minister towards Dr. Lake after the friendly relationship between them had broken down.

57. However their Lordships are of opinion that the facts alleged by Dr. Lake are such that the High Court and the Court of Appeal were right to hold that his claim of discrimination was of sufficient substance to be heard by the High Court on a constitutional motion. On the facts alleged by Dr. Lake, in the Primary Election for St. John's Rural North in mid 1993 the candidate supported by Dr. Lake defeated the candidate supported by the Prime Minister, and shortly thereafter, when they met, the Prime Minister told Dr. Lake that he would deal with him. Their Lordships consider that the fact that in an election Dr. Lake supported a candidate who successfully opposed another candidate supported by the Prime Minister is sufficient to raise the issue that the treatment of Dr. Lake in respect of his position as Medical Superintendent of Holberton Hospital constituted discrimination attributable to his political opinions or affiliations. Their Lordships further consider that the High Court was entitled to decide not to exercise the discretion given to it by the proviso to section 18(2).