

IN THE SUPREME COURT OF BERMUDA
CIVIL JURISDICTION

2020: No.

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
AND IN THE MATTER OF A CLAIM FOR DAMAGES

OSWIN PEREIRA

Applicant

-and-

THE COMMISSIONER OF POLICE

Respondent

NOTICE OF APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
FORM 86A – ORDER 53

Applicant's Ref. No.	Notice of APPLICATION for leave to apply for Judicial Review (O. 53, r. 5)	Supreme Court Ref. No.
To the Registrar of the Supreme Court, Supreme Court Registry, Hamilton HM 12		
Name, address and description of applicant	<p>The Applicant is Oswin Pereira c/o Resolution Chambers, Innovation House, 1st Floor, 46 Reid Street, Hamilton HM 12.</p> <p>The Applicant's address for service is c/o of Resolution Chambers, Innovation House, 1st Floor, 46 Reid Street, Hamilton HM 12.</p>	
Judgement, order, decision of other proceeding in respect of which relief is sought.	The Respondent's decision to dismiss him before due process was complete.	

Relief Sought

- A. Leave be granted to the Applicant to issue an Originating Motion seeking the following Order:
1. An Order that the Applicant shall be reinstated;
 2. An Order that the Applicant's conditions of service, namely benefits and salary, be reinstated;
 3. An Order for a declaration that the decision by the Respondent to dismiss the Applicant was premature and thus unlawful;
 4. An Order for damages;
 5. Any further or other relief;
- The grounds upon which relief is sought are set out below.

GROUND ON WHICH RELIEF IS SOUGHT

Order 53 Rule 3

1. On 20th January 2020, a finding of guilt was made, and the Misconduct Panel recommended that the Applicant be dismissed from the Bermuda Police Service.
2. The Respondent is the authority that orders the dismissal. However, the Applicant is entitled to due process under the Police (Conduct) Order 2016, which includes his right of appeal.
3. The Applicant was dismissed before his right of appeal was exhausted.
4. The Applicant did in fact appeal to the Public Service Commission.
5. His appeal was successful to the extent that they held that the recommendation made by the Misconduct Panel to dismiss the Applicant was unreasonable and that it be varied to that of a final warning and *de facto* reinstatement.
6. The Applicant is entitled to continue to receive his salary and benefits under the Conditions of Service Orders.

DATED the day of 2020.

Victoria Greening
(Resolution Chambers)
Attorney for the Applicant

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Innovation House

1st Floor, 46 Reid Street

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Attorneys for the Applicant

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BETWEEN

OSWIN PEREIRA

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-v-

THE COMMISSIONER OF POLICE

Respondent

FIRST AFFIDAVIT OF OSWIN PEREIRA

1. I write this affidavit in support of my judicial review against the Respondent.
2. There is now produced to me and shown to me marked as **EXHIBIT "OP-1"** a paginated bundle of documents to which I will refer to in this affidavit. Reference to page numbers are references to the page numbers in this bundle.
3. I confirm that the contents of which affidavit are within my knowledge, save where expressly stated to be on information and belief and in such circumstances, I verily believe them to be true.
4. On 20th January 2020, a finding of guilt was made against me at a Misconduct Proceedings Hearing and the Misconduct Proceedings Panel ("**MPP**") for the recommended that I be dismissed from the Bermuda Police Service. The Respondent is the authority that orders the dismissal.

5. I am entitled to due process under the Police (Conduct) Order 2016, which includes my right of appeal. I attach herewith at pages 1 to 5 of my exhibit marked as “OP-1” a copy of the relevant sections of the Order.
6. Notwithstanding, I was dismissed before my right of appeal was exhausted.
7. I did in fact appeal to the Public Service Commission (“PSC”).
8. On 17th August 2020, a decision was handed down by the PSC and I was successful to the extent that they held that the recommendation made by the MPP to dismiss me was unreasonable and should be varied to that of a final warning. In other words, an Order was made for me to be reinstated with the BPS. I attach herewith at pages 6 to 28 of my exhibit marked as “OP-1” a copy of the appeal decision.
9. Therefore, I am entitled to continue to receive my salary and benefits under the Police (Conditions of Service) Order 2002. I attach herewith at pages 29 to 84 of my exhibit marked as “OP-1” a copy of the Order.
10. I humbly seek that my application be granted as sought.

SWORN by the above-named

OSWIN PEREIRA

City of Hamilton in the

Islands of Bermuda this day of

October 2020

BEFORE ME:

COMMISSIONER OF OATHS

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1st Floor, 46 Reid Street
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Attorneys for the Applicant