

**IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
BEFORE HIS LORDSHIP, HON. JUSTICE R.B.HAASTRUP**

DATE: NOVEMBER 28, 2017

SUIT NO. NICN/ABJ/231/2015

BETWEEN:

Aaron Kaase..... *Claimant*

AND

1. The Chairman Police Service Commission
2. The Permanent Secretary
Police Service Commission
4. Police Service Commission

Defendants

REPRESENTATION:

K.A. Achabo with H.A. Chaha and D.L. Saror for the claimant

Babatunde Dada- Assistant Director, Legal Services for 1st, 2nd and 4th defendants.

JUDGEMENT

The claimant took out this complaint against the defendants, dated and filed on the 21st day of July, 2015 seeking the following:

1. A declaration that a prima facie case of serious misconduct has not been established against the claimant by the defendants.
2. An order declaring claimant's purported letter of suspension dated the 21st day of May, 2015 and authored by the 3rd defendant as null and void and of no effect.
3. An order directing the 2nd defendant to reinstate the claimant in her service to carry out his normal duties and enjoyment of his emoluments.
4. An order directing the 2nd defendant to pay the claimant all emoluments, promotions or any entitlement he has missed as a result of the purported suspension.
5. An order perpetually restraining the defendants from taking any further disciplinary steps in respect of this complaint.
6. An order of exemplary and punitive damage to the tune of N20, 000, 000.00 (Twenty Million Naira only) to be paid jointly or severally by the defendants.

The complaint is accompanied with the claimant's statement of facts, witness statement on oath, list of witness and copies of documents to be used at the trial. The defendants entered appearance and filed processes in defence. This case was however first mentioned on the 3rd day of March, 2016. It is noteworthy that the 3rd defendant's name was struck out in this suit on same date, sequel to the Notice of Preliminary Objection filed by the 3rd defendant on the 2nd day of December, 2015. Meanwhile, the 1st, 2nd and 4th defendants filed their statement of defence with all other originating processes vide the motion dated 1st day of March, 2016, but filed on the 2nd day of March, 2016, while commencement of trial was on the 29th day of March, 2017, and the claimant testified same date as CW and was cross examined accordingly by the defendants' counsel. The claimant as (CW) relied on Exhibits CW1 – CW3, which were tendered and admitted in evidence.

CASE OF THE CLAIMANT

From his statement of facts, the claimant was employed into the service of the 4th defendant on the 3rd day of November, 2003, as a Principal Admin Officer. He served in the press unit of the 4th defendant as protocol officer to the then Chairman of the 4th defendant, Mr. Parry Osayande (DIG RTD). To the claimant, he had discharged his duties diligently and was never issued with any query from the 4th defendant, until the purported suspension letter served on him on the 27th day of May, 2015, which was dated 21st May, 2015 and authored by the 3rd defendant. He averred that he was not given the opportunity to defend the allegation against him, and no query was served on him, neither was any panel set up to look into the allegation against him; hence this suit against the defendants and the reliefs being sought thereto.

CASE OF THE DEFENDANTS

The defendants on their part averred in their statement of defence that the claimant was arrested and detained on a case of criminal breach of trust, cheating, threat to life and unlawful possession of document; vide the letter received from the office of the Assistant Inspector General of Police Zone 7 on the 5th day of May, 2015. That the claimant was later arraigned before the Chief Magistrate Court 5 Wuse, Abuja, which led to the suspension of the claimant in line with the provisions of the Public Service Rules; and the claimant, did also inform the defendants of the pendency of the criminal case against him. To the defendants further information revealed that the claimant was re-arrested and charged to Magistrate Court 4 Zone 2 on the 9th day of November, 2015. The defendant continued that the claimant's claims is vexatious and gold digging; urging the court to dismiss same in its entirety.

At the trial, one Emmanuel Chibuzor Ibe, Director Admin in the Police Service Commission, testified on behalf of the defendant as DW, and relied on Exhibits DWE 1- DWE4, which were tendered and admitted in evidence. The defendant witness

concluded his evidence on the 1st day of June, 2017, and the court directed counsel to file and exchange their final written addresses, was adopted on the 25th day of September, 2017.

SUBMISSIONS OF THE DEFENDANT

The defendants' final written address is dated 15th June, 2017, but filed 21st June, 2017, and counsel for the defendants submitted a sole issue for determination, to wit: *whether by the provision of Rule 030406 of Public Service Rules the defendants have the power to suspend the claimant based on the circumstances of the criminal case pendency against him at the court.*

According to the defendant's counsel, the following facts are not in dispute:

- a.) The claimant is an employee of the 4th defendant.
- b.) He claimant was suspended by the 4th defendant vide Exhibit CW.2
- c.) The claimant was having a pending criminal case with the police and the court.
(He never joined issues with the defendants in his pleadings and the claimant admitted this fact under cross examination and Exhibit DWE.2/DWE.4 tendered before the court.

According to counsel, the suspension of the claimant is a normal procedure taken in order to facilitate investigation of an alleged inappropriate conduct; and the disciplinary proceeding as applicable to the claimant was in line with the Public Service Rules. To counsel, the period of suspension will keep the employee out of mischief and provide the employer further time for reflection, and it is the interest of the employer that is paramount at this stage, while the principle of fair hearing is in abeyance. He relied on the case of *Longe vs. FBN (2006) 3 NWLR (Pt. 967) @ 228.*

Counsel went on to submit that the claimant had admitted under cross examination that he has a pending criminal case in court, and the defendant equally tendered Exhibits DWE.2 – DWE.4 in that regard. To counsel the claimant cannot complain about his suspension in view of the pending criminal issues against him, referring to Exhibit CW2; and the suspension will remain in force until the criminal case against him is disposed of. He went on that the claimant's suspension is not indefinite, and the claimant only needs to get discharged and acquitted of the criminal allegation against him before he could resume work, and so the question of fair hearing does not arise. On the definition of 'suspension', counsel relied on the case of *University of Calabar vs. Etiaga (2004) 18 NSCQR. 1 Pg. 18*, to say that suspension is a state of affairs that should wait until certain event. He then submitted that the claimant is not entitled to the reliefs as claimed in paragraph 19 (a – f) of the statement of facts,

since his suspension is proper; urging the court to dismiss the claimant's claims for lacking in merit.

SUBMISSIONS OF CLAIMANT

The claimant's final written address was filed vide the motion dated and filed 20th September, 2017, and deemed properly filed and served on 25th day of September, 2017. The claimant's counsel submitted three (3) issues for determination, namely –

1. *Whether the defendants adhered to the disciplinary procedure as provided by the Public Service Rules in suspending the claimant.*
2. *If issue 1 above is in the negative, was the claimant's right to fair hearing as guaranteed by the 1999 Constitution of the Federal Republic of Nigeria as amended breached.*
3. *Whether the claimant is entitled to damages suffered as a result of the act of the defendant.*

Issue No. 1: Whether the defendants adhered to the disciplinary procedure as provided by the Public Service Rules in suspending the claimant

Counsel referred the court to Exhibit CW2 dated 21st May, 2015 which conveyed the suspension of the claimant on a case of serious misconduct, and under Rules 030406 and 030405 of the Public Service Rules (2008). To counsel, the procedure as enunciated by the Public Service Rules must be strictly adhered to in any disciplinary action against an allegedly recalcitrant employee; and any disciplinary procedure for serious misconduct shall be in accordance with the provisions of Rules 030302 to 030306. Counsel went on to reproduce Rule 030401 which defines serious misconduct as follows:

"Specific act of very serious wrong doing and improper behaviour which is inimical to the image of the service and which can be investigated and if proven may lead to dismissal."

He equally gave a summary of Rules 030302 to 030306 thus:

"as soon as a superior officer becomes dissatisfied with the behaviour of any officer subordinate to him/her, it shall be his/her duty to inform the officer in writing giving details of unsatisfactory behaviour and to call upon him/her to submit within a specific time such written representation as he/she may wish to make to exculpate himself/herself from disciplinary action....."

If not satisfied with the response, then Rule 03044 (d) becomes applicable, which allows the officer to be suspended at the appropriate point in investigation and in accordance with Rule 030405. According to counsel, it is not in dispute that the defendants have unfettered power and right to take disciplinary actions against her employee in order to maintain sanity, but the procedure as enunciated in the Public Service Rules must be adhered to, relying on *FMC, Ido-Ekiti vs. Alabi* (2012) 2 NWLR (Pt. 411) (*Incomplete Citation*); *Olaniyan vs. University of Lagos* (Pt. 9) 599; to the effect that an employment with statutory flavour is one which is protected by statute or laid down regulations made to govern the procedure for employment and discipline of an employee.

Counsel went on and referred the court to paragraph 15 of the claimant's statement of facts, to the effect that the claimant was not issued with a query, was equally not given the opportunity to defend the allegation or explain anything, neither was any panel set up to look into any allegation against him. To counsel, the defendants never disputed these facts in their statement of defence or under cross examination. Meanwhile, that DW had under cross examination stated that the claimant was issued with a query, but had no query presented before the court, on the excuse that the claimant's case was well known and needed no formal procedure to be punished for the allegation against him; that DW admitted also that a query ought to have preceded the claimant's suspension. The defendant also never tendered any document to show that the claimant was still facing any criminal trial, but only tendered a document alluding to the fact that the claimant was discharged and rearrested.

He further submitted that the defendant observed the Rules in breach thereby infringing on the Right to Fair Hearing of the claimant; urging the court to set aside the purported suspension since the proper procedure was never followed.

Issue No. 2: If issue 1 above is in the negative, was the claimant's right to fair hearing as guaranteed by the 1999 Constitution of the Federal Republic of Nigeria as amended breached.

Counsel relied here on the case of *Nwosu vs. Nwosu* (2012) 8 NWLR (Pt. 1301) Pg. 1; *K.S.H.A. vs. Adegbé* (2010) 10 NWLR (Pt. 1201) Pg. 45.

Relying on the above cases, counsel submitted that the claimant's right to fair hearing as guaranteed by Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) was seriously breached by the defendants, and the court in the circumstance ought to set aside the said suspension.

Issue No. 3: Whether the claimant is entitled to damages suffered as a result of the act of the defendant.

Counsel urged the court to award damages to the claimant as a form of deterrent from the oppressive abuse of office, and to hold that the laid down Rules relied upon by the defendants in suspending the claimant was not followed; hence his Right to Fair Hearing was breached and punitive damages ought to be awarded in the circumstance, relying on *University of Calabar vs. Oji* (2012) ALL FWLR (Pt. 636) Pg. 603, Paras F-H.

No reply on points of law was filed.

COURT'S DECISION

I have considered the processes filed by the parties, and the written submissions of counsel in that regard. In resolving the issues in dispute, this court will adopt the three (3) issues argued by claimant's counsel in his written address, to wit:

1. Whether the defendants adhered to the disciplinary procedure as provided by the Public Service Rules in suspending the claimant.
2. If issue 1 above is in the negative, was the claimant's right to fair hearing as guaranteed by the 1999 Constitution of the Federal Republic of Nigeria as amended breached.
3. Whether the claimant is entitled to damages suffered as a result of the act of the defendant.

Before I go into the merit of the case, it is necessary to mention here that there is no dispute between the parties as to the nature of employment of the claimant; in other words, the employment in this case is one governed and regulated by statute. It is not also in dispute that it is the Public Service Rules which regulates the employment of the claimant in this case, and which both parties have relied upon in this suit. In the circumstance, this Court will not go outside the Public Service Rules in determination of the issues before it.

Issue No. 1: Whether the defendants adhered to the disciplinary procedure as provided by the Public Service Rules in suspending the claimant.

The claimant's case is that due process was not followed before his purported suspension by the defendants vides Exhibit CW2. To the claimant he was not confronted with any allegations against him, neither did he appear before any

disciplinary panel, and was not equally served with any query. Meanwhile the defendant in his testimony stated that the arrest of the claimant was known to everyone and he needed not be officially served with any query. He again contradicted his earlier evidence and stated that a query was served on the claimant but the query was not before the court. To the defendant the claimant was suspended in order to facilitate investigation of an alleged inappropriate conduct; and the disciplinary proceeding as applicable to the claimant was in line with the Public Service Rules. In the contrary, the claimant under his cross examination stated that his suspension was not done to allow claimant face the criminal charges against him, but rather because of the petition which he wrote to the EFCC and ICPC against the police which necessitated his being charged to court.

The defendant relied on Rule 030406 of the Public Service Rules in suspending the claimant, and that a *prima facie* case of Serious Misconduct has been established against the claimant on the allegation of Criminal Breach of Trust, Cheating and Threat to life. I have perused Rule 030406 of the Public Service Rules 2009 relied upon by the defendants which is reproduced below:

Rule 030406: "*Suspension should not be used as a synonym for interdiction. It shall apply where a prima facie case, the nature of which is serious, has been established against an officer and it is considered necessary in the public interest that he/she should forthwith be prohibited from carrying on his duties. Pending investigation into the misconduct, the Federal Civil Service Commission or the Permanent Secretary/Head of Extra Ministerial Office (if within his/her delegated powers) shall forthwith suspend him/her from the exercise of the powers and functions of his/her office and from the enjoyment of his/her emolument.*"

Meanwhile by Rule 030401 PSR, "Serious Misconduct" is defined thus:

"Serious Misconduct is a specific Act of very serious wrong doing and improper behaviour which is inimical to the image of the service and which can be investigated and if proven, may lead to dismissal."

The offences which constitute serious acts of misconduct are listed under Rule 030402 of the PSR, which was applied by the defendant in suspending the claimant. The same PSR provides that disciplinary procedure for serious misconduct shall be in accordance with Rules 030302 to 030306. Rule 030302 makes it mandatory for the officer who has been alleged of the offence of serious misconduct to be confronted in writing of such allegations, such that he will have the opportunity to make his representations on the allegations against him. Rule 030302 is reproduced as follows:

Rule 030302: "As soon as a superior officer becomes dissatisfied with the behaviour of any officer subordinate to him/her, it shall be his/her duty to inform the officer in writing giving details of unsatisfactory behaviour and to call upon him/her to submit within a specific time such written representation as he/she may wish to make to exculpate himself/herself from disciplinary action. After considering such written representations as the officer may make within the specified time the superior officer shall decide whether:

- a.) The officer has exculpated himself/herself in which case, he/she shall be so informed in writing and no further action shall be necessary, or
- b.) The officer has not exculpated himself/herself but it is considered that he/she should not be punished in which case the appropriate formal letter of advice shall be issued to him/her and he/she shall be required to acknowledge its receipt in writing, or
- c.) The officer has not exculpated himself/herself and deserves some punishment, in which case Rule 030304 shall apply."

Meanwhile, Rules 030303, 030304 and 030305 all deal with the other disciplinary procedures of setting up Tribunal of Inquiry or panel as may be applicable, which makes recommendation to the Federal Civil Service Commission (Police Service Commission) in this case, and the Commission shall call upon the officer to reply to the allegations made against him/her by the Tribunal or Panel, before accepting or refusing the recommendations of the Panel of inquiry. The Panel or Tribunal of inquiry could then proceed and take any such disciplinary action against the officer as it shall deem appropriate. By Rule 030304 (d), the officer may at the appropriate point in investigation be suspended in accordance with Rule 030405. Furthermore, by Rule 030305, where an investigation into the matter is conducted, the officer is entitled to know the whole case made against him/her, and shall have adequate opportunity of making his/her defence....."

It is obvious from the foregoing that before Rules 030405 and 030406 become applicable, the entire process of disciplinary procedure must be followed as laid down in Rules 030302 – 030306. The defendants in this case, have not issued the claimant with any query; there is equally no evidence before the court to the effect that the claimant was invited before any Panel of Inquiry set up by the defendant, for the claimant to make his representations. How the defendant has arrived at a conclusion of *prima facie* case established against the claimant remains unrevealed. It is thus not sufficient to merely state that a *prima facie* case has been established against the claimant in this case, and then proceed to suspend him, without following the

disciplinary procedure as enunciated in the Public Service Rules, which is what regulates the employment of the claimant in this case. The defendants have failed to present before this court any investigation report or panel report of proceedings to show that the proper disciplinary procedure was followed regarding the suspension of the claimant in this case.

I need to reiterate here again, that the employment in this case is a statutory one, and the Public Service Rules which govern the employment in this case are made pursuant to the powers conferred by the Constitution. The Rules therefore have constitutional force and they invest the public servant, over whom they prevail, a legal status, which place their employment over and above the common law relationship of master and servant; and introduces in such employment relationship, the *vires* element of administrative law. Consequently, any act of discipline of a public servant in the established pensionable cadre, which is not in compliance with the Public Service Rules, will be *ultra vires, null and void*. See *Iderima vs. R.S.C.S.C (2005) 16 NWLR (Pt. 951) 378; Olaniyan vs. University of Lagos (1985) ALL NLR 363; F.C.S.C. vs. Laoye (1989) 2 NWLR (Pt. 106) 652 SC.*

The failure of the Police Service Commission to investigate the allegations against the claimant, as a civil servant and on pensionable cadre in accordance with the provisions of the Public Service Rules before disciplinary actions, such as suspension in this case, is imposed on the claimant, amounts to a denial of natural justice and fair hearing, as guaranteed by the Constitution. See *Section 36 of the 1999 Constitution of Nigeria (As amended); Iderima vs. R.S.C.S.C (Supra); Otapo vs. Sunmonu (1987) 2 NWLR (Pt. 58) 597 SC.* I therefore find and hold also that the suspension of the claimant in this case vide Exhibit CW2 dated 21st day of May, 2015, is null, void and of no effect. The defendants have not placed any materials before the court to show that a *prima facie* case has been established against the claimant, neither was the due process followed in the suspension of the claimant. Consequently, issues 1 & 2 are resolved in favour of the claimant.

Issue No. 3: *Whether the claimant is entitled to damages suffered as a result of the act of the defendant.*

This court is not convinced as to the award of damages in this suit; and above issue is resolved against the claimant.

In light of the foregoing, the claimant therefore succeeds in his reliefs 1, 2 and 4 as contained in paragraph 19 of his statement of facts. Meanwhile, regarding relief 2 on reinstatement; since the claimant's appointment was not terminated, but only

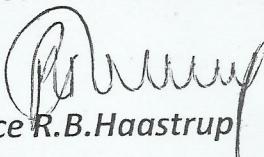
abated due to suspension from service, the claim for reinstatement is of no moment as the claimant's employment is taken to still be subsisting.

On relief 5; this is asking this court to restrain the defendants from taking any further disciplinary steps in respect of the claimant. The position of the law is that an employer cannot be gagged from disciplining an erring employee, once same is done in accordance with the terms and conditions of service or laid down rules and regulations as may be applicable. The employer who has the power to employ also has such powers of discipline of its employee. In the circumstance, relief No. 5 is not grantable.

In sum, this court doth hold and pronounce as follows:

1. That the defendants have failed to prove that a prima facie case has been established against the claimant.
2. The suspension of the claimant vide the letter dated 21st day of May, 2015, is null, void and of no effect, and is hereby set aside; and the claimant shall be recalled back to resume his normal duties in the service of the 3rd defendant.
3. The defendants shall pay the claimant all his emoluments and entitlements accruable to him during the period of his suspension and until he is recalled.
4. The above orders of this court take effect from the date of this judgement.

Judgement is entered accordingly. No cost is awarded in this action.



Hon. Justice R.B. Hastrup