



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2026 No 231

BETWEEN: DAVID DEOLALL BHAGWAN APPLICANT

-AND-

COMMISSIONER OF POLICE RESPONDENT

Application for interim injunctive pending the hearing of judicial review proceedings under RSC Order 53 rule 1 (2)

Date of Hearing: 25 August 2026

Date of Ruling: 26 August 2026

Ms Victoria Greening of Resolution Chambers for the Applicant

Mr Brian Myrie of the Attorney General's Chambers for the Respondent

Martin J

In Chambers

RULING

Introduction

1. This is the court's Ruling in relation to an application by the Applicant (to whom I shall refer as Mr Bhagwan in this Ruling) for an interim injunction pending the determination of judicial review proceedings, for which leave was given by this court on 21 August 2026. The Notice of Motion has not been issued or served and no directions have yet been given in relation to the conduct of the proceedings. However, the relief sought in

the judicial review proceedings is to quash a decision of the Commissioner of Police by which he refused to accept Mr Bhagwan's Notice of Retirement from the Bermuda Police Service. This is set out in Mr Bhagwan's first affidavit in support of the grant of leave to commence judicial review proceedings.

2. The relevant factual background to the application is undisputed. Mr Bhagwan has been employed as a police officer by the Bermuda Police Service for 26 years and has achieved the rank of Inspector, and he is 52 years of age. On 10 August 2026 Mr Bhagwan was served with a Notice of Special Case Hearing under Order 43 of the Police (Conduct) Orders 2016 in relation to various allegations of misconduct on his part. The details of those allegations are not relevant for the purposes of the present application.
3. Following receipt of the Notice of Special Case hearing, on 11 August 2026 Mr Bhagwan sent a Notice of Retirement addressed to the Commissioner of Police indicating that he had served for more than 25 years and was over fifty years of age, and that he was therefore entitled to retire. He indicated that his last day of service would be 14 August 2026.
4. The Commissioner of Police replied refusing to accept the Notice of Retirement on the basis that a resignation from the Bermuda Police Service can only be made effective with the consent of the Commissioner of Police and that since disciplinary action is presently pending against Mr Bhagwan, permission to resign would not be granted until after the outcome of the disciplinary proceedings. Mr Bhagwan's counsel wrote to the Commissioner of Police to say that leave had been granted to issue judicial review proceedings to quash the Commissioner's refusal to accept Mr Bhagwan's Notice of Retirement and asked for the Special Case proceedings to be deferred until after the conclusion of the judicial review proceedings. The Commissioner of Police replied saying that as the grant of leave had not ordered a stay of the disciplinary proceedings, they had been initiated and would proceed as constituted.
5. The hearing of the Special Case was scheduled for 10:00 am on 26 August 2026¹. In light of that fact, Mr Bhagwan's counsel made the present application to restrain the Commissioner of Police from proceeding with the pending disciplinary action against him until after the determination of the judicial review proceedings. The essence of the basis for the need for an injunction was that Mr Bhagwan has an unqualified right to retire once he has achieved the age of 50 or has served for more than 25 years. The proposition of law advanced by Mr Bhagwan is that if Mr Bhagwan's Notice of Retirement is legally effective, it follows he is no longer a member of the Bermuda Police Service, and therefore the Police (Conduct) Orders 2016 no longer apply to him,

¹ At the conclusion of the hearing for interim relief after 5.00 pm on 25 August 2026, the Commissioner of Police agreed to postpone the hearing until 1 pm on 26 August 2026 to enable the court to gather its thoughts and prepare a Ruling on the application overnight.

because they only apply to current members of the Bermuda Police Service. No express provision is made for Police (Conduct) Orders 2016 to apply to former members of the Bermuda Police Service.

6. Therefore, it is argued that since the Commissioner of Police has refused to postpone the disciplinary proceedings pending determination of the issue whether Mr Bhagwan has validly retired, it is necessary and just for the court to grant urgent interim injunctive relief to restrain the Commissioner of Police from proceeding with the disciplinary action until the question whether Mr Bhagwan has left the Bermuda Police Service has been determined by the court. It was submitted that if Mr Bhagwan's position is upheld by the court at the hearing, then any disciplinary proceedings will be unlawful and of no effect. Counsel for Mr Bhagwan referred to the obvious prejudice that Mr Bhagwan will suffer if the disciplinary proceedings go ahead but it is later found that he is not subject to the Police (Conduct) Orders 2016 as a retired officer. Ms Greening also referred to the wasted time, cost and potential reputational damage that may ensue from the disciplinary proceedings as being highly prejudicial, as well as a potential financial impact on his ability to obtain pre-retirement benefits, which may be recovered in the form of payment in lieu of pre-retirement leave. These elements were said to weigh heavily in favour of injunctive relief.
7. The position taken by Mr Bhagwan is that the right to retire is not contained in or governed by the Police (Conditions of Service) Orders 2024 but is a separate right conferred by section 16 (1) (i) (a) of the Bermuda Public Service Superannuation Act 1981 which provides (so far as material):

“in the case of a police officer or a fire officer--

- (i) On or before 31 March 2027, on the police officer or fire officer attaining the age of fifty-five years; or where he is below the rank of Superintendent or Divisional Officer as the case may be, on attaining that age or on completing twenty-five years service as a police officer or a fire officer, whichever first occurs.”²*

(emphasis added)

8. Mr Bhagwan's argument is that the provisions of the Police (Conditions of Service) Orders 2024 do not cover retirement but only refer to retirement in relation to pre-retirement leave and pre-retirement classes in the context of benefits. Mr Bhagwan has adopted the position that a resignation from the police service is not the same as a retirement and says that the Commissioner of Police cannot refuse to accept a Notice of Retirement under the provisions of Article 4 of the Police (Conditions of Service) Orders 2024. Mr Bhagwan says he has an unqualified right to retire at any time after he

² It is also relevant to note that corresponding provisions apply to persons who attain 52 years of age and the 25 years service qualification.

has achieved the qualifying age and length of service under the Bermuda Public Service Superannuation Act 1981 and the Police (Conditions of Service) Orders 2024 do not apply to retirement. These Orders provide (so far as material):

“ 4.1 No member may resign without the permission of the Commissioner of Police. Members of the service, including cadets, wishing to resign their appointment, shall give written notice to the Commissioner of their intention and shall state their last working day and last day of service.

*4.4 Members in the rank of Inspector and above will be allowed to resign **three months** from their last day of duty, or less if circumstances dictate, taking into consideration the operational requirements of the service.”*

(emphasis added)

9. Counsel for the Commissioner of Police submitted that the term resignation in Article 4 is an inclusive and general word covering any voluntary termination initiated by a police officer, and for obvious operational and disciplinary reasons must include a termination by reason of having become eligible to retire under the conditions set out in the Bermuda Public Service Superannuation Act 1981. It was submitted that the obvious interpretation of Article 4 of the Police (Conditions of Service) Order 2024 requires all officers to seek permission to retire as a resignation from office, and an Inspector must give three months notice of his intention to resign, which includes a resignation by reason of retirement.
10. In addition, Mr Myrie submitted that section 64 of the Bermuda Public Service Superannuation Act 1981 requires 30 days' notice of election to be given³, so that even if Mr Bhagwan's interpretation of Article 4 of the Police (Conditions of Service) Orders 2024 were to be accepted by the court, Mr Bhagwan was necessarily still a member of the Bermuda Police Service because the 30-day notice period has not expired. Mr Myrie submitted that it follows that Mr Bhagwan must necessarily still be subject to the Police (Conduct) Orders 2016 for the purposes of the hearing scheduled for tomorrow.
11. Mr Myrie also pointed out the obvious public policy considerations that would apply to an interpretation of the Police (Conditions of Service) Orders 2024 which would enable an officer to retire at his or her own election at any time after reaching retirement age or 25 years' service in order to avoid facing disciplinary action.

³ This provision requires an intending retiree to elect whether he or she will take a pension under the 1981 Act or under the repealed Act (if applicable) and to give 30 days' notice prior to the effective date of his retirement from or cessation of employment in the public service.

The court's function on an interim injunction application

12. There are two primary considerations for the court on application for the grant of interim injunctive relief of which the first is to ascertain whether there is a serious issue to be tried. There is no definitive test for making this assessment, but it is a low threshold and involves the applicant for relief demonstrating to the court that the application for judicial review (or other relief) is arguable or has a reasonable prospect of success at trial. The court does not conduct a mini-trial of the merits of the issue, or express any tentative view of the likely prospects of success. The relevant principles are well known and well established and are usually referred to as the 'American Cyanamid principles' (after the celebrated case **American Cyanamid Co v Ethicon Ltd** [1975] HL 396).
13. Once satisfied that there is a serious issue to be tried, the court then makes an evaluation of the balance of justice, taking into account all the competing factors and assessing whether the grant of the relief on an interim basis is necessary and proportionate to achieve justice, weighing the competing rights and interests of the parties. This is traditionally referred to as the balance of convenience, but the courts have often said that the expression 'the balance of justice' is an expression which conveys a more accurate description of the process the court undertakes.
14. In weighing the balance of justice, the court takes into account all relevant circumstances and will often grant relief where damages are an inadequate remedy and where interim relief is necessary to preserve the status quo pending the trial. However, an injunction is an equitable remedy, and the court will take into account a range of other factors which include the conduct of the parties, and the impact of the injunction on their relative rights and remedies, and all the circumstances of the individual case.
15. These principles are not in dispute, although Mr Myrie submitted that in a case of this type which involve public law issues, the court is required to make suitable modifications to those principles where necessary to achieve a just result.

Serious issue to be tried

16. It is not for the court to determine which interpretation of the applicable rules is correct for the purposes of the present application, unless the interpretations of the Police (Conduct) Orders 2016 and the Police (Conditions of Service) Orders 2024 and the Bermuda Public Service Superannuation Act 1981 put forward by Mr Bhagwan do not raise a serious issue to be tried.
17. In reviewing the conflicting arguments and the lack of clarity surrounding the precise mechanisms that apply to retirement in the Police (Conditions of Service) Orders 2024, the position is not as clear as it could and should be. For example, there is no express

provision dealing with retirement in the Police (Conditions of Service) Orders 2024, and the focus of the language used in the Orders is a voluntary resignation prior to retirement. The argument for a wider interpretation of ‘resignation’ to include retirement is one of interpretation and assessment which ought not to be conducted on an interlocutory hearing unless it is plain and obvious that it is not possible to draw a meaningful distinction between resignation and retirement.

18. Although the provisions of section 16 of the Public Service Superannuation Act 1981 are aimed at the right to make a claim for pension from the Bermuda Government after fulfilling the qualifying years of service, the provisions could (arguably) be interpreted as making retirement mandatory after meeting the minimum requirements to qualify for a pension. The effect of the requirement for 30 days’ notice of election in section 64 of the 1981 Act seems to relate to a claim for pension rather than for the notice of termination of employment by reason of retirement, but that is a matter which must be left for full argument at the judicial review hearing, not determined summarily by the court on this application.
19. The court is not prepared to say that the arguments put forward by Mr Bhagwan are unarguable or unsustainable or have no realistic prospect of success, even though there are some obvious hurdles that he will have to overcome in persuading the court that his arguments should prevail at the ultimate hearing. There is therefore in my view a serious issue to be tried. The court is mindful of the potentially wide implications that the interpretation of these provisions will have upon all other serving police officers. It would be inappropriate for the court to reach any immediate conclusions on such important issues on an urgent application for interim relief.
20. In principle, therefore, Mr Bhagwan should be allowed to present his arguments in full at a hearing, and the Commissioner of Police should have the opportunity to meet those arguments at a full hearing when all elements can be fully considered by the court. Only then can the court make a decision as to the correct interpretation of the relevant instruments and statutory provisions that govern a retirement from the Bermuda Police Service.

Balance of justice

21. Being satisfied that there is a serious issue to be tried, the court is next required to consider the balance of justice when granting interim interlocutory relief of this type.

Factors that favour the grant of injunctive relief

22. The factors that favour of the grant of relief pending the full hearing are that if Mr Bhagwan's legal analysis is correct, then Mr Bhagwan should not have to undergo the ordeal of a disciplinary proceeding if it does not apply to a retired police officer. If Mr Bhagwan's arguments are ultimately upheld at the judicial review hearing, the disciplinary process which he would have undergone in the meantime would have been unlawful and pointless. It would take time and potentially involve considerable expense which he may not recover. The distress and potential reputational damage that would be caused could not be undone if he ultimately prevails in the judicial review proceedings.
23. The Commissioner of Police fairly accepted that the postponement of the disciplinary hearing would not prejudice the conduct of the disciplinary proceedings at a later date if Mr Bhagwan's interpretation of his unqualified and unilateral right to retire is not upheld.

Factors that militate against the grant of injunctive relief

24. However, there are two factors that militate against the grant of interim relief. During the course of argument, Mr Myrie submitted that if the court were minded to grant an interim injunction or stay of the police disciplinary proceedings, then the court should also make provision for preserving the status quo.
25. Mr Myrie submitted that if the primary argument advanced by the Commissioner of Police is rejected, namely that the effect of Article 4 of the Police (Conditions of Service) Orders 2024 requires the Commissioner to give his consent to a resignation and this includes notice of an intention to retire, then Mr Bhagwan should not be able to rely upon the effluxion of time between now and the hearing date to contend that he is no longer covered by the Police (Conduct) Orders 2016.
26. For example, Mr Myrie submitted that if Mr Bhagwan is required to give 30 days' notice of his intention to retire pursuant to section 64 of the Public Service Superannuation Act 1981 (as explained above), or the three month period under Article 4.4 of the Police (Conditions of Service) Orders 2024 or any other period of notice under the general law of employment, then Mr Bhagwan should not be able to rely on the delay between now and the hearing to contend that the 30 day period (or other period) has run, and that he has by then lawfully retired and so the Police (Conduct) Orders 2016 no longer apply to him, although they would have applied to him at the time of the disciplinary hearing.
27. The court considered this to be a very fair point, without deciding on the merits of the application of the 30-day notice period under section 64 or how it applies to the present facts. The court invited Mr Bhagwan to confirm that if the court were to grant him an

interim injunction that he would not later rely upon the passage of time between now and the hearing date to contend that whatever the position might have been today, the 30-day (or other) period would have elapsed by the time of the hearing, thereby rendering him outside the scope of the Police (Conduct) Orders 2016. The court asked for Mr Bhagwan to give the court his undertaking not to rely on the delay between now and the judicial review hearing, since the court cannot at this time make a definitive ruling on the point.

28. After a brief opportunity to consider the point, Mr Bhagwan through his counsel declined to give the undertaking. In my view, this is a very significant factor to be taken into account in weighing where the balance of justice lies.

Court's assessment of where the balance of justice lies in this case

29. Ordinarily an applicant for interim injunctive relief must offer a cross-undertaking in damages to abide by any order the court may make as to compensation to the respondent for any loss occasioned by the injunction that the court considers just in the event the ultimate determination of the issue is not in the applicant's favour. This is not a case where a cross undertaking in damages arises, but the principle behind the concept still applies.
30. The purpose of a cross-undertaking is (broadly speaking) to maintain the *status quo ante* (so far as is possible) until the court can properly adjudicate on the issues and come to a binding determination on the merits of the issues in dispute. A party should not be allowed to seek the benefit of the court's discretionary protection on the one hand and at the same time use the injunction to obtain a tactical advantage in the litigation on the other.
31. In this case, the effect of Mr Bhagwan's submission is that the court should tie the hands of the Commissioner of Police by postponing the disciplinary proceedings but allow Mr Bhagwan to use the delay between the injunction and the hearing to argue that he will then have satisfied any notice requirements and thereby be beyond the disciplinary reach of the Commissioner of Police's jurisdiction under the Police (Conduct) Orders 2016. That would in my view be a plainly unjust and inequitable result.
32. The second consideration that the court considers relevant to refusing the grant of interim relief is the public interest. Mr Myrie submitted that the premise that lies behind the present application is of wide public importance both as to the retirement process for police officers (and potentially other public servants) and the application of the Police (Conduct) Orders 2016. The public interest lies in ensuring that serving police officers are subject to proper disciplinary control and that the court should not facilitate a serving officer from evading accountability for (alleged) misconduct under the police disciplinary rules by purporting to retire so that they are no longer members of the

police service before the disciplinary machinery under the Police (Conduct) Orders 2016 can operate.

33. It is apparent from the chronology referred to by Mr Myrie that the sole purpose of the Notice of Retirement was to enable Mr Bhagwan to claim that he is no longer a serving member of the police service prior to the date of the disciplinary hearing that had already been convened.
34. Mr Bhagwan received the Order 43 Notice under the Police (Conduct) Orders 2016 convening a Special Case Hearing on 10 August 2026, with a hearing date of 10.00 am on 26 August 2026. Mr Bhagwan gave his Notice of Retirement the very next day, effective three days later on 14 August 2026. The Order 43 Notice required Mr Bhagwan to provide his responses by 19 August 2026, but Mr Bhagwan did not do so, stating that he had exercised his right to retire and that he was no longer a member of the Bermuda Police Service. Mr Bhagwan then sought leave to issue judicial review proceedings seeking to quash the Commissioner of Police's refusal to accept his Notice of Retirement on 17 August 2026. Leave was granted on the papers on 21 August 2026.
35. As Mr Myrie submitted, the court must also take into account the public law elements that arise in applications for injunctive relief and exercise its discretion "*to take the course which seems most likely to produce a just result (or to put the matter less ambitiously, to minimise the risk of an unjust result.*"⁴
36. Weighing all these factors, both for and against the grant of relief, the court is not satisfied that the balance of justice falls in favour of granting an interim injunction to restrain the Commissioner of Police from proceeding with the Special Case hearing. The effect of so doing would be to restrain the orderly conduct of a disciplinary proceeding which had commenced *before* the Notice of Retirement had been given by Mr Bhagwan, without a cross-undertaking that Mr Bhagwan will not use the delay between the injunction and the judicial review hearing to claim that any notice period for his retirement has expired in the meantime so that he is immune from disciplinary action. I have in mind both the requirement for a 30-day notice issue that arises under section 64 of the Public Service Superannuation Act 1981 and the three-month notice of resignation provision in Article 4.4 of the Police (Conditions of Service) Orders 2024.
37. Further, the court is not satisfied that it would be an appropriate exercise of the court's discretion to restrain disciplinary proceedings which are under way as part of a litigation strategy on the part of Mr Bhagwan to avoid being subject to legitimate disciplinary proceedings which were commenced while he was a serving police officer.

⁴ **Belize Alliance Conservation Non-Governmental Organizations v Department of Environment of Belize** [2013] 1 WLR 2839 per Lord Walker at paragraph 39.

38. The Police (Conduct) Orders 2016 contain an appeal mechanism which is available to Mr Bhagwan in the event that he is found to have been guilty of misconduct, which provides an appropriate remedy. In addition, if the present judicial review proceedings ultimately conclude that his Notice of Retirement was effective and that Mr Bhagwan was entitled to retire on 14 August 2026 and thereby ceased to be amenable to the Police (Conduct) Orders 2016, the court will have the appropriate powers to quash any decision made in relation to his conduct.
39. Therefore, for the reasons explained the court hereby refuses Mr Bhagwan's application for interim injunction. The court will hear the parties on the question of costs of the application.

Dated this 26th day of August 2026



THE HON. MR. JUSTICE ANDREW MARTIN
PUISNE JUDGE OF THE SUPREME COURT