

1953

Present : Gratiaen J. and Gunasekara J.

M. SANTIA PILLAI, Appellant, and THE ATTORNEY-GENERAL,
Respondent

S. C. 258—D. C. Colombo, 19055/M

Public servant—Liability to dismissal at pleasure of Crown—Ceylon (State Council) Order in Council, 1931, Art. 86—Effect of Royal Instructions.

By Article 86 of the Ceylon (State Council) Order in Council, 1931,

“(1) The appointment, promotion, transfer, dismissal, and disciplinary control of public officers shall be vested in the Governor, subject to any Instructions given under His Majesty’s Sign Manual and Signet and, in so far as concerns the Auditor-General, to the provisions of Article 83.

(2) The Governor may, subject to such Instructions and provisions as aforesaid, and with the approval of the Secretary of State, delegate to such public officers having authority in or over Government departments as he shall think fit, subject to such conditions as he may prescribe, the appointment, promotion, transfer, dismissal and disciplinary control of officers who are not in receipt of annual pensionable emoluments exceeding such sum as may be specified in such Instructions.”

Held, that there is nothing in Article 86 that is inconsistent with the condition that is ordinarily implied in the terms of employment of a public servant other than the Auditor-General, that he holds office only during the pleasure of the Crown. Consequently a public servant who is aggrieved by any failure to comply with the procedure for dismissal prescribed by the Royal Instructions must seek his remedy by administrative process and has no remedy by action in a court of law.

APPEAL from a judgment of the District Court, Colombo.

S. J. V. Chelvanayakam, Q.C., with *V. A. Kandiah* and *A. Nagendra*, for the plaintiff appellant.

B. C. F. Jayaratne, Crown Counsel, for the Attorney-General, respondent.

Cur. adv. vult.

June 5, 1953. GUNASEKARA J.—

This is an appeal from a judgment of the District Court of Colombo dismissing an action brought by the appellant, Mr. Santia Pillai, against the Attorney-General for the recovery of a sum of Rs. 11,458·24 which he claims as arrears of salary and allowances due to him as a servant of the Government. He was appointed to the Government Railway Clerical Service in 1920. On the 23rd February, 1945, the Governor ordered that he should be retired for inefficiency. This order was officially communicated to him on the 4th March, 1945, and he ceased to work as a public servant from the following day. It is contended for him that the order was not made in accordance with the procedure prescribed by law and is therefore void and inoperative, and that he is entitled to a declaration that he continues to be a member of the Public Service or should be treated as continuing to be one.

The procedure that is said to have been contravened is laid down in certain Royal Instructions to the Governor in these terms :—

“ the grounds of intended dismissal shall be definitely stated in writing and communicated to the officer in order that he may have full opportunity of exculpating himself, and the Governor shall investigate the case with the aid of the head of the department in which the officer shall then be serving.”

The circumstances in which the order in question was made were these. As a result of an audit report there was a departmental investigation of alleged irregularities in the work of the Jaffna railway station staff. In December, 1943, the Governor appointed a retired member of the Ceylon Civil Service, Mr. T. W. Roberts, “ to act temporarily as Investigating Officer, Jaffna Railway Station Inquiry, to complete the inquiries in connection with the irregularities discovered at the Jaffna railway station and to hold a face to face inquiry and furnish a report ”. Mr. Roberts had had considerable experience as a magistrate and district judge and had been the District Judge of Galle at the time of his retirement from the Civil Service, having held that office for the preceding nine years. After a preliminary inquiry Mr. Roberts advised that certain charges should be framed against the appellant, and his recommendation was placed before the Attorney-General. In July, 1944, eight charges in writing, approved by the Attorney-General, were served on the appellant. Mr. Roberts inquired into them in September and submitted his recommendation to the General Manager of Railways, who was the head of the department. The inquiry was held in the presence of the appellant, and he cross-examined the witnesses who were called in support of the charges, and also gave evidence on his own behalf and called witnesses. On the 4th December, 1944, the General Manager of Railways forwarded Mr. Roberts's report to the Public Services Commission, whose function it was, in terms of Article 89 of the Ceylon (State Council) Order in Council, 1931, to advise the Governor in the exercise of his powers of dismissal and disciplinary control of public officers.

The Governor's order was communicated to the General Manager of Railways by a letter from the Chief Secretary dated the 28th February, 1945, which referred to the General Manager's communication to the Public Services Commission. This letter states that “ His Excellency the Governor finds Mr. Santhiapillai guilty of the first five of the eight charges framed against him and has ordered that Mr. Santhiapillai should be retired for inefficiency and that a reduction of 15% should be made in his pension. ”

It is contended for the Attorney-General that there was no irregularity in the procedure that was adopted ; and that even if there was, the appellant held office at the pleasure of the Crown and therefore would have no cause of action in a court of law but only a remedy by administrative process.

It is settled law that “ in a contract for service under the Crown, civil as well as military, there is, except in certain cases where it is otherwise provided by law, imported into the contract a condition that the Crown

has the power to dismiss at its pleasure": *Gould v. Stuart*¹; and public servants hold their offices "not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement, as is well understood throughout the public service": *Shenton v. Smith*². It is contended for the appellant that the power of the Crown to dismiss at pleasure was restricted by the terms of Article 86 of the Ceylon (State Council) Order in Council, 1931.

Article 86 is in these terms :

- " (1) The appointment, promotion, transfer, dismissal, and disciplinary control of public officers shall be vested in the Governor, subject to any Instructions given under His Majesty's Sign Manual and Signet or through the Secretary of State and, in so far as concerns the Auditor-General, to the provisions of Article 83.
- (2) The Governor may, subject to such Instructions and provisions as aforesaid, and with the approval of the Secretary of State, delegate to such public officers having authority in or over Government departments as he shall think fit, subject to such conditions as he may prescribe, the appointment, promotion, transfer, dismissal and disciplinary control of officers who are not in receipt of annual pensionable emoluments exceeding such sum as may be specified in such Instructions. "

The Instructions that had been given to the Governor under the Royal Sign Manual and Signet at the material time included certain instructions about the appointment, promotion and dismissal of public officers. Instruction VIII laid down the conditions subject to which the Governor might delegate his powers. Instruction IX provided that all commissions to be granted by the Governor, or by any public officer acting under his authority, to any person or persons foreexercising any office or employment should, unless otherwise provided by law, be granted during the pleasure of the Crown only. Instruction X prescribed the procedure for dismissal of public officers. Mr. Chelvanayakam contends that these instructions are given statutory force by Article 86 of the Order in Council and that the power of the Crown to dismiss a public servant at its pleasure is restricted by the provisions of Instruction X. He seeks in this way to draw an analogy between Article 86 of the Order and section 240 of the Government of India Act, 1935, which provides as follows :

- " 240—(1) Except as expressly provided by this Act every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.
- (2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.
- (3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him..... "

¹ (1896) A. C. 575, *Privy Council*.

² (1895) A. C. 229, *Privy Council*.

It was held by the Privy Council in *The High Commissioner for India v. Lall*¹ that sub-section (3) was mandatory and constituted an express provision of the Act which qualified the provisions of sub-section (1) and provided a condition precedent to the exercise by the Crown of its power of dismissal. A provision somewhat similar to sub-section (3) had previously been contained in rules made under section 96B (2) of the Government of India Act, 1919, and sub-section (1) of that section had provided as follows :

“ Subject to the provisions of this Act and of rules made thereunder, every person in the civil service of the Crown in India holds office during His Majesty's pleasure, but no person in that service may be dismissed by any authority subordinate to that by which he was appointed, ”

Referring to this proviso the Privy Council observed in *Rangachari v. Secretary of State*² that it is “ manifest that the stipulation or proviso as to dismissal is itself of statutory force and stands on a footing quite other than any matters of rule which are of infinite variety and can be changed from time to time ”, and held that a dismissal of a public officer by an authority subordinate to that by which he was appointed was therefore bad and inoperative. In another case, *Venkata Rao v. Secretary of State*³, which was decided at the same time, the Privy Council held that a failure to comply with the procedure for dismissal prescribed by rules made under subsection (2) of section 96B of the Act of 1919 did not give any right of action to a dismissed officer, although there had been “ a serious and complete failure to adhere to important and indeed fundamental rules ”. Contrasting the provisions of section 96B of the Act of 1919 with those of section 240 of the Act of 1935 the Privy Council held in *Lall's Case*¹ “ that the provision as to a reasonable opportunity of showing cause against the action proposed is now put on the same footing as the provision now in subsection (2) of S. 240, which was the subject of decision in *64 I. A. 40*² and that it is no longer resting on rules alterable from time to time, but is mandatory and necessarily qualifies the right of the Crown recognised in S. 240 of 1953 ”. Mr. Chelvanayakam's contention is that in Ceylon, Instruction X of the Royal Instructions to the Governor similarly qualifies Instruction IX and that both are incorporated in Article 86 of the Order in Council and therefore have statutory force. He also contends that, alternatively, if the Royal Instructions cannot be read as a part of Article 86, the appointments which the Governor is empowered by that Article to make would not be subject to the condition referred to in Instruction X, that the offices are to be held only during the pleasure of the Crown.

I am unable to accept either of these contentions. The instructions to which the Governor's powers are made subject, whether given under the Royal Sign Manual and Signet or issued through a Secretary of State, are no more a part of the Order in Council than the rules referred to in section 96B of the Government of India Act, 1919, are a part of that section. Nor is there anything in Article 86 that is inconsistent with

¹ *A. I. R. 1948 P. C. 121.*

² *A. I. R. 1937 P. C. 27 ; 64 I. A. 40.*

³ (1937) *A. C. 248 ; 64 I. A. 55.*

the condition that is ordinarily implied in the terms of a public servant's employment, that he holds office only during the pleasure of the Crown. On the contrary, the provision that, except in the case of the Auditor-General, the powers given to the Governor are vested in him "subject to any Instructions given under His Majesty's Sign Manual and Signet or through the Secretary of State" indicates that all public officers other than the Auditor-General hold office subject to the pleasure of the Crown. A contrast is furnished by the provisions of Article 83 about the Auditor-General's tenure of office, which clearly negative the implication of such a condition in the terms of his employment; for that Article enacts that the Auditor-General "shall hold office during good behaviour, provided that he shall be removed from office by the Governor upon an address praying for his removal presented to the Governor by the Council, provided also that he may be required by the Governor to retire from the public service on the ground of age or infirmity. " There is nothing in the Order in Council that restricts the power of the Crown to dismiss at pleasure any other public officer.

As was pointed out by my brother in the case of *Vallipuram v. Postmaster-General*¹, "The Royal Instructions regulating the procedure for dismissal merely issued directions for the guidance of the Governor, and did not constitute a contract between the Crown and its servants". Consequently a public officer aggrieved by any failure to comply with those instructions must seek his remedy by administrative process and has no remedy by action in a court of law. It is therefore not necessary to discuss the argument that was addressed to us on the question whether there has been a failure to comply with the Royal Instructions. If, however, it were necessary to decide that question I should hold that the procedure prescribed by the Instructions has been followed.

In my opinion the appeal must be dismissed with costs.

GRATIAEN J.—I agree.

Appeal dismissed.

