

1945

*Present: Rose J.*

LABROOY (S. I. POLICE), Appellant, and AMERESEKERA,  
Respondent.

119—M. C. Colombo, 12,827.

*Defence (Service Employees) Regulations, 1942, Regulation 2—Contract of service—Termination of contract by a week's notice—Leaving service without prior consent in writing.*

The effect of Regulation 2 of the Defence (Service Employees) Regulations, 1942, is to prevent any employee of the Admiralty irrespective of the terms of his contract, from leaving his employment without the prior written consent of the Captain Superintendent or any other officer acting under his authority.

<sup>1</sup> 32 N. L. R. 211.

## A PPEAL against an acquittal by the Magistrate of Colombo.

H. W. R. Weerasooriya, C.C., for the complainant, appellant.

H. V. Perera, K.C. (with him J. L. M. Fernando and N. M. de Silva) for the accused, respondent.

*Cur. adv. vult.*

March 27, 1945. ROSE J.—

In this case the respondent was acquitted by the Magistrate of an offence *contra* the Defence (Service Employees) Regulations, 1942. It appears that on July 15, 1943, the respondent signed a document, (exhibit P 1) which Mr. Weerasooriya, Crown Counsel, agrees should be regarded as a contract, in which there appears a provision that the contract may be terminated by either side on the giving of one week's notice. At the foot of this contract appears an endorsement in the following terms "each entrant undertakes that he will be subject to the Defence (Service Employees) Regulations, 1942". In the Magistrate's Court, however, the respondent stated that this endorsement which is type-written whereas the remainder of the contract was printed, did not appear on the document at the date of signature. The Magistrate accepted this contention and the case was therefore argued before me on the footing that no such endorsement was present.

An issue of fact arose in the trial court as to whether a week's notice was in fact given. For the purposes of this appeal, I am of opinion that I am bound by the Magistrate's finding that the respondent in fact gave two weeks' notice and that therefore he would seem to have complied with the term of his contract as to notice.

The relevant part of Regulation 2 of the Defence (Service Employees) Regulations, 1942, reads as follows:—"No person who, on or after the date on which these regulations are published in the *Gazette*, is employed by the Admiralty . . . in any capacity in Ceylon shall leave such employment . . . without prior consent obtained in writing . . . from the Captain Superintendent, Ceylon, or any other officer acting under his authority". It is common ground that no such prior consent was obtained by the respondent.

Mr. H. V. Perera for the respondent contends, in the first place that the charge was defective in that it did not disclose an offence. It is true that the charge is wrongly drafted but in my opinion this point cannot be sustained in view of section 171 of the Criminal Procedure Code (Cap. 16). The substantial point of Mr. Perera's argument was that by the wording of the regulation itself it is necessary that at the time of the leaving of employment the person in question must have been employed by the Admiralty. In the present case it is contended that the respondent was not employed at the date of his leaving (*i.e.*, April 1, 1944) in that the effect of his two weeks' notice which was in accordance with the express terms of his contract, was that he ceased to be in the employment of the Admiralty at midnight on March 31, 1944, which was the time when the period of his notice expired.

On the face of it this argument would seem to be logically correct, but learned Crown Counsel relies—and it seems to me correctly—on Regulation 3 of the above Regulations which reads as follows:—“For the purposes of those regulations a person shall be deemed to be employed by the Admiralty . . . . if the name of that person appears in any salary book, pay book or muster book kept for the purposes of any Naval . . . . establishment in Ceylon”. Having regard to that, it seems to me, that it is not open to me to hold otherwise than that it is the intention of the legislature which is adequately implemented by the language of the regulations, to prevent any employee of the Admiralty, irrespective of the terms of his contract, from leaving his employment without prior written consent. That being so, I am of opinion that the appeal must be allowed, the judgment of the Magistrate set aside and the respondent convicted of the offence with which he is charged.

I would add that learned Crown Counsel himself stated that this case was only regarded as of importance in view of the legal issue involved. On the merits it would seem to be unfortunate that this particular respondent should have been put to such inconvenience.

Having regard to the circumstances of the case, I am of opinion that a purely nominal penalty will suffice and I therefore impose a fine of Re. 1 in default one day's simple imprisonment.

*Appeal allowed.*

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