

1969

*Present : Sirimane, J., and Weeramantry, J.*

THE CEYLON HOTELS CORPORATION, Appellant, and  
C. JAYATUNGA, Respondent

*S.C. 262/68 (F)—D. C. Colombo, 69122/M*

*Injunction—Order granting an interim injunction—Right of appeal therefrom—Courts Ordinance (Cap. 6), s. 73—Civil Procedure Code, s. 666—Resthouse-Keeper appointed by Tourist Bureau—Appointments subsequently held by him under Tourist Board and, on probation, under Ceylon Hotels Corporation—Termination of his services by the Corporation—Whether he can claim an interim injunction—Tourist Board Act No. 10 of 1966, s. 56—Motor Transport Act No. 48 of 1957, ss. 9 (3) (a), 9 (3) (b) (i), 9 (3) (b) (ii).*

A party who is dissatisfied with an order granting an interim injunction is entitled to appeal therefrom to the Supreme Court under section 73 of the Courts Ordinance.

The plaintiff who was appointed by the Tourist Bureau as a Resthouse-Keeper in 1957 was subsequently employed by the Tourist Board on 1st May 1966 when the Tourist Board Act No. 10 of 1966 came into force on that day. On acceptance of employment under the Board, the provisions of section 9 (3) (a) of the Motor Transport Act applied to him and he ceased to be a public servant. When he was discontinued by the Tourist Board, he raised no protest. He then worked for the defendant (the Ceylon Hotels Corporation) temporarily on the conditions offered to him. When he was found unfit and discontinued he filed the present action and obtained an interim injunction from the District Court restraining the defendant from ejecting the plaintiff from the Kitulgala Rest House. The plaint, *prima facie*, did not disclose a right to the occupation of the Rest House. The plaintiff's causes of action appeared to be based on contracts of service.

*Held*, that the plaintiff was not entitled to an interim injunction. Such an injunction is granted on equitable grounds and the conduct and dealings of the parties before the application to Court should be taken into consideration.

APPEAL from an order of the District Court, Colombo.

*C. Ranganathan, Q.C., with Paul Perera and C. Sandrasagara, for the defendant-appellant.*

*E. R. S. R. Coomaraswamy, with Niha Jayawickrama, C. Chakradaran, S. C. B. Walgampaya and P. H. Kurukulasuriya, for the plaintiff-respondent.*

*Cur. adv. vult.*

July 15, 1969. SIRIMANE, J.—

I am unable to uphold the preliminary objection taken by Mr. Coomaraswamy that the defendant has no right of appeal against the order of the learned Trial Judge granting the plaintiff an interim injunction restraining the defendant from ejecting the plaintiff from the Kitulgala Rest House. That was an *inter partes* order made after inquiry at which both parties were heard. Such an order is an appealable one, and the right of appeal is granted to the party dissatisfied by section 73 of the Courts Ordinance, Chapter 6. Section 666 of the Civil Procedure Code does not disallow that right of appeal, and that section would apply in cases where the Court grants an interim injunction in the first instance before the other party is heard; or where there are subsequent supervening circumstances which could not have been foreseen, at the time the interim order was made.

The plaintiff was appointed by the Tourist Bureau as a Resthouse-Keeper in Grade II in 1957. The Tourist Bureau was a Government Department to which the Public Service Commission had delegated powers to make such appointments. The plaintiff thereby became a Government Servant subject to the Public Service Commission Rules, Financial Regulations, Departmental Orders, etc.

On 1.5.1966, the Tourist Board Act 10 of 1966 came into force, and it is clear that the plaintiff was employed by the Tourist Board from that day. Though the plaintiff has not expressly stated that he accepted the employment, it is quite clear that he did. He received his salary from the Tourist Board and worked as its employee from 1.5.1966 till 31.3.1967. Counsel for him had admitted employment under the Board in his address in the Lower Court and I do not think there can be any doubt on this matter now.

Section 56 (1) of the Ceylon Tourist Board Act reads as follows:—

“ On the appointed date, those officers and servants of the Government Tourist Bureau or the Tourist Development Board, who do not belong to a transferable service of the Government, may be employed by the Board on such terms and conditions as shall be agreed upon by the officer and the Board; and in any such case Section 9 (3) (a) (b) and (c) of the Motor Transport Act No. 48 of 1957 shall apply *mutatis mutandis* to any such officer or servant.”



The plaintiff accepted his employment. Had he not, he would have been retired under the provisions of section 56 (2). It is unnecessary to consider whether section 56 (2) is *ultra vires* the Constitution for that situation does not arise here. This contention was not urged before us in appeal.

On acceptance of employment under the Board, the provisions of section 9 (3) (a) applied to him and he ceased to be a public servant. Under section 9 (3) (b) (i) and section 9 (3) (b) (ii), any pension rights which had accrued to him while serving as a public servant, were conserved. Section 9 (3) (b) (i) sets out the manner in which the *quantum* of his pension was to be ascertained for the purposes of making an award. Section 9 (3) (b) (ii) specified the *time* at which he would be entitled to payment.

Sections 9 (3) (b) (i) and 9 (3) (b) (ii) read as follows :—

- (i) he shall be eligible for such an award under those Minutes (i.e., the Minutes on Pensions) as might be made to him if he had been retired from the public service on the ground of ill-health on the date of his permanent employment to the staff of the Board.
- (ii) the amount of any such award made under those Minutes shall not be paid to him unless his employment in the staff of the Board is terminated by retirement on account of age or ill-health or by the abolition of the post held by him in such staff or on any other ground approved by the Minister of Finance.

These sections have nothing to do with the powers of the Board to discontinue its employees. The plaintiff's employment under the Board was not a "statutory employment". The relationship between the Board and the plaintiff was that of an employer and employee.

The learned District Judge seriously misdirected himself when he thought that these two sub-sections, particularly 9 (3) (b) (ii), restricted the right of the Board to discontinue an employee only on the grounds of age or ill-health. The Board had every right, like any other employer, to discontinue the services of an employee. If the discontinuance was wrongful, the employee would have a cause of action against the Board.

I think it is quite clear that the Board, by its circular letter dated 8.3.1967, discontinued the services of the plaintiff. The relevant parts of that letter read as follows :—

"As intimated to you by the Chairman, while your services are not required by the Board from 1st April, 1967, in lieu of notice you will be paid by the Board till 8th June, 1967. You will however be under the control and supervision of the Hotels Corporation from 1st April, 1967. Those of you who have completed 10 years pensionable service in the Government up to 30.4.1966, will be paid a pension in terms of section 7 (1) (i) of the Pension Minutes."



The Board apparently sent another letter dated 27.3.1967 addressed to the plaintiff personally, terminating his services, as stated in the affidavit of the General Manager of the defendant Corporation. It had been agreed at the hearing in the District Court that this matter should be decided on the affidavits filed, and this statement was not contradicted. In fact, in para. 13 of his affidavit, the plaintiff himself referred to this letter. There is also the defendant's letter dated 28.3.1967 addressed to all Rest House Keepers, including the plaintiff, in which it states—

“ With reference to the letter dated 8th March, 1967 addressed to you by the Ceylon Tourist Board, you are hereby informed that at the termination of your service under the Board, your service will continue under the Ceylon Hotels Corporation, subject to your having had a good record of service and competency. ”

These two letters make it quite clear that the plaintiff's services were terminated by the Board.

The learned trial Judge appears to have overlooked this vital fact. Having so terminated the plaintiff's services the Board handed over the control and management of the Rest-House to the defendant Corporation.

The plaintiff then worked on probation under the defendant in accordance with the terms in the letter dated 28.3.1967 referred to above. He went through a course of training and subjected himself to a test. He was found to be unfit and his temporary services were terminated as from 31.1.1968 by letter P1 dated 31.10.1967. The plaintiff then apparently made an appeal to the defendant that he be granted an extension. This appeal was granted on compassionate grounds and by letter dated 31.1.1968, the date of the termination of his services was extended to 30.4.1968. Having obtained this extension, the plaintiff filed this action on 27.4.1968.

Whether the plaintiff is entitled to a declaration that he is still a public servant on the ground that the Ceylon Tourist Board Act No. 10 of 1966 is *ultra vires* the Constitution, or to a declaration that he is still in the service of the Tourist Board on the ground that the letter terminating his services by the Board is *ultra vires* the powers of the Board—even so—he has no right to the occupation and control of the Rest-House. The plaint, *prima facie*, does not disclose a right to the occupation of the Rest-House in question. His causes of action appear to be based on contracts of service.

In *Vine v. National Dock Labour Board*<sup>1</sup>, 1957 A.C. at page 488, Lord Keith said—

“ Normally, and apart from the intervention of statute, there would never be a nullity in terminating an ordinary contract of master and servant. Dismissal might be in breach of contract and so unlawful, but could only sound in damages. ”

<sup>1</sup> (1957) A. C. at p. 488.

I do not wish to say more regarding the plaintiff's claims as the main case is pending. On the arguments adduced, and the material placed before us in the present appeal, I am of the view that the plaintiff is not entitled to an interim injunction. Such an injunction is granted on equitable grounds and the conduct and dealings of the parties before the application to Court should be taken into consideration. (Vide Volume 21 Simonds Edition of Halsbury, page 367.)

The plaintiff accepted employment under the Board. When he was discontinued by the Board, he raised no protest. He then worked for the defendant on the conditions offered to him. When he was found unfit and discontinued, he obtained an extension from the defendant on compassionate grounds and at the end of the extension, he filed this action. He is an employee who, so far, has failed to show that he has any right to remain in occupation; but, he still remains in the rest-house and prevents the defendant, or anyone else, from controlling it.

I am of the view that an interim injunction should not have been granted to the plaintiff in this case.

The order of the learned District Judge is set aside. The defendant is entitled to costs of this appeal.

WEERAMANTRY, J.—I agree.

*Order set aside.*