APPELLATE CIVIL.

Before Mitter and Sen JJ.

1938

June 29 ; *July* 7.

SECRETARY OF STATE FOR INDIA IN COUNCIL

v.

SURENDRA NATH GOSWAMI.*

Civil servant—Crown's power of dismissal at pleasure—Rules of service—Dismissal in violation of rules, if actionable—Suspension of service—Damages.

In the absence of any statute restricting its power, the Crown has an unfettered discretion to dismiss a public servant at pleasure.

Dunn v. *The Queen* (1) followed.

Such power cannot be controlled by rules of service even if they are framed under powers given by a statute.

Shenton v. *Smith* (2) and *Venkata Rao* v. *Secretary of State for India in Council* (3) relied on.

Rules of service are mere directions given by the Crown for general guidance and the dismissal of a servant in violation of the rules does not give rise to a cause of action, but only entitles the servant to appeal to the administrative authorities.

Venkata Rao v. *Secretary of State for India in Council* (3) relied on.

An employer has no implied power to punish a servant by suspension. Where the employer has no specific power of suspension, a servant can sue for damages for not being allowed to work.

Hanley v. *Pease & Partners, Limited* (4) followed.

Wallwork v. *Fielding* (5) relied on.

APPEAL FROM ORIGINAL DECREE preferred by the defendant with cross-objections.

The facts of the case and arguments in the appeal appear sufficiently from the judgment.

*Appeal from Original Decree No. 110 of 1936, against the decree of Dhirendra Nath Guha, First Subordinate Judge of Howrah, dated Feb. 29, 1936.

(1) [1896] 1 Q.B. 116.
(2) [1895] A. C. 229.
(3) I. L. R. [1937] Mad. 532; L. R. 64 I. A. 55.
(4) [1915] 1 K. B. 698.
(5) [1922] 2 K. B. 66.

The Senior Government Pleader, Sarat Chandra Basak, and *Bhabesh Narayan Bose* for the appellant.

Gopendra Nath Das and *Shambhu Nath Banerjea* for the respondent.

Cur. adv. vult.

The judgment of the Court was as follows:—

This appeal by the defendant, the Secretary of State for India in Council, is directed against the judgment and decree of the Subordinate Judge of Howrah, dated February 29, 1936. By that judgment and decree the plaintiff's claim was allowed in part. The plaintiff has also filed a memorandum of cross-objections.

The plaintiff entered the service of the East Indian Railway Company in 1901 as a clerk and continued to be so till the end of 1924. In 1925 the railway became a State Railway, and the plaintiff's service was continued by the Railway Board acting on behalf of the Government of India, the plaintiff entering into a contract with the latter. The material terms of the contract which is printed at p. 4 of Part II of the paper-book are:—

(*i*) the service was to be that of a monthly servant, terminable at any time on a month's notice on either side or by payment by Government of a month's salary in lieu of notice;

(*ii*) he was liable to immediate dismissal or suspension without pay for refusal of duty, disobedience of orders, absence without leave, negligence or misconduct or neglect of Government rules and orders applicable to his service;

(*iii*) that he would be bound by all general rules and regulations of Government service with certain specified exceptions which are not material to the present controversy.

The Fundamental Rules made by the Secretary of State for India in Council under s. 96B of the last Government of India Act, and supplementary rules made by the Governor-General in Council under the Fundamental Rules were made applicable to his service.

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In 1928 and part of 1929 the plaintiff was the head clerk in the office of the Permanent Way Inspector at Howrah, Edwards being the Permanent Inspector, and Panchanan Datta, the pay clerk. The practice prevalent in the Permanent Way Inspector's office was that thumb impressions of the *coolies* had to be obtained on their pay bills at the time of payment. On some of the pay bills appeared some thumb impressions which were not of *coolies* named therein but of three office peons. The plaintiff certified that those thumb impressions were of the *coolies* concerned, his case being that he did it at the request of Edwards. When this was discovered later on, two of the said peons, the plaintiff and Panchanan Datta were placed on July 3, 1930, on trial before a Magistrate on many charges. The peons pleaded guilty and were convicted. Panchanan was acquitted but the plaintiff was convicted and sentenced to one year's rigorous imprisonment by the Magistrate on February 28, 1931. His conviction and sentence were upheld on appeal by the Sessions Judge, but on revision this Court acquitted him on September 18, 1931. At the time of his arrest the plaintiff was a clerk in the office of the Divisional Superintendent at Howrah at a pay of Rs. 93.

On July 4, 1930 he was placed under suspension by the Divisional Superintendent, Howrah. The order ran thus :—

> You are hereby advised that you are placed under suspension with immediate effect (July 4, 1930) till the alleged case against you is finally decided.

On his conviction by the Magistrate, two notes were recorded in his service-record at the instance of the Divisional Superintendent. One was that he was—

> Placed under suspension from July 4, 1930 to February 27, 1931 and that ¼th pay was allowed.

The other was that he was

> dismissed from February 28, 1931, for having been convicted by Court in a case of fraud—*re*: payment of wages of staff.

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On his acquittal the last note was cancelled and he was called upon to explain why he should not be dismissed for neglect of duty which had resulted in loss to the railway. He submitted an explanation. He was not ultimately dismissed, but discharged from service on January 19, 1932, a month's pay being given in lieu of notice. He was given by the defendant $\frac{1}{4}$th of his pay, his pay being taken at Rs. 93 per month from July 4, 1930 to January 18, 1932 and a month's pay at Rs. 93 in lieu of notice. In the plaint, after reciting the facts, he averred that he was "unjustly, improperly and illegally dealt "with". He claimed,—

(*a*) Rs. 950-0 as damages for wrongful dismissal;

(*b*) Rs. 1,515-0 as gratuity;

(*c*) Rs. 548-12-0 being $\frac{3}{4}$ths of his pay from July 4, 1930 to February 27, 1931, at Rs. 93;

(*d*) Rs. 1,029-13-0 being balance of pay including grade increment from February 28, 1931 to January 18, 1932 at Rs. 97 a month;

(*e*) Rs. 3-10-0 being balance of pay on account of grade increment from 19th January to 18th February, 1932;

(*f*) Rs. 600-12-0 being the allowance during period of leave said to be due to him—for 6 months from 19th February to 18th August, 1932;

(*g*) Rs. 207-8-0 Provident Fund bonus from July 4, 1930 to August 18, 1932 with interest thereon.

There were also a few other items which he claimed, but it is not necessary for us to consider them. The Subordinate Judge held that the plaintiff had been discharged—irregularly, that is, by disregarding the rules prescribed. In answer to the defendant's contention that no damages for wrongful discharge could be claimed or awarded in the suit, as the plaintiff, being in service of the Crown, held his post

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during His Majesty's pleasure, the Subordinate Judge said that the plaintiff no doubt held his post at the pleasure of His Majesty but that—

> His Majesty is a constitutional Monarch and even his pleasure is not wanton and irresponsible, but must be constitutional and expressed through constitutional channels. It is therefore the case that in every case of Crown servants rules are prescribed for dismissal or discharge and even the humblest of His Majesty's servants is not dismissed or discharged except strictly according to these rules. The very fact that rules are framed shows that it is not to be a case of wanton pleasure but constitutional as expressed in these rules. Indeed the rules made are the formal expressions of His Majesty's pleasure. If, therefore, you do not follow the rules not only do you do wrong to a Crown servant but are at the same time guilty of not carrying out His Majesty's pleasure and the servant wronged would be entitled to invoke the aid of His Majesty's Court for such redress as are available to him in law.

The rules referred to in this part of the Subordinate Judge's judgment are the Fundamental Rules framed under s. 96B of the last Government of India Act.

We have quoted this part of the Subordinate Judge's judgment *in extenso* for the purpose of recording our unqualified dissent.

All service under the Crown is public service, that is for public benefit. Continued employment of a civil servant might in many cases be detrimental to the interest of the State just as much as continued employment of a military officer. An act of indiscretion on the part of a civil servant may involve His Majesty in war. It is, therefore, a fundamental principle, based on public policy, that the Crown should have the unfettered discretion to remove a public servant at pleasure, and even a contract to engage him for a fixed term, if there be no statute law authorising it, would not be available to him, such a contract being void as against public policy: *Dunn* v. *The Queen* (1). This power to dismiss at will can only be controlled by a statute [*Gould* v. *Stuart* (2)] but cannot be abridged or controlled by rules or regulations of service [*Shenton* v. *Smith* (3)] even

(1) [1896] 1 Q. B. 116. (2) [1896] A. C. 575.
(3) [1895] A. C. 229.

if those rules or regulations are framed under powers given by a statute [*Venkata Rao* v. *Secretary of State for India in Council* (1)]. Such rules and regulations would be regarded as directions given by the Crown for general guidance and a dismissal or discharge of a servant in violation of them would not entitle him to an appeal to the civil Courts but would leave him to appeal only to the administrative authorities.

The Subordinate Judge, however, disallowed the claim for damages for wrongful discharge on the ground that the discharge was a valid one in terms of the contract of service, a month's pay being given to the plaintiff in lieu of notice. With this view we agree.

The Subordinate Judge gave the plaintiff a decree on the basis that the plaintiff was entitled to full pay at Rs. 93 a month from July 4, 1930 (the date of his suspension) till January 18, 1932, when he was discharged. The rest of his claim was dismissed. The defendant urges that the decree thus given ought to be discharged. The plaintiff presses his memorandum of cross-objections in respect of what we have stated as items Nos. (*e*) and (*g*) of his claim and he further claims an additional amount falling within item No. (*d*) on account of grade increment. We can at once say that his cross-objections have no merits. He is not entitled to the sums claimed in item No. (*g*), which, according to him, represents the amount which his employer ought to have contributed to his Provident Fund from July 4, 1930 to August 18, 1932. The claim from January 19, 1932 to August 18, 1932 is preposterous, for he was validly discharged from service on January 19, 1932. For the rest of the period he has no claim under the Provident Fund Rules, because for this period he did not contribute anything. His claim for increased grade

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pay is also untenable, for promotion depended upon the discretion of his employer. He cannot be heard to say in a Court of law that he ought to have been promoted during the period of his suspension. If he had been reinstated after suspension he could have preferred that claim before his departmental superiors but certainly that is not a matter for the Court.

We will now take up the points involved in the defendant's appeal.

The plaintiff was suspended by the order which we have quoted above. In terms of that order, the suspension would have lasted till September 18, 1931, when the case against him was finally disposed of by this Court. But, in the meantime, in his service-sheet, a note was recorded that his suspension lasted till February 27, 1931. This note was recorded on the footing that his dismissal, since recalled, was from the day following. When the note about his dismissal was cancelled the other note was left as it was, and the period of suspension was not extended. One would have ordinarily attributed it to mere omission, but in Ex. V1 (II-29)—docket from the Agent, East Indian Railway—there is a note that the suspension was from July 4, 1930 to February 27, 1931. On these materials we hold that the suspension lasted up to February 27, 1931.

Two propositions are, in our judgment, well established. The first is that there is no implied power in the employer to punish a servant by suspension: *Hanley* v. *Pease & Partners, Limited* (1). If a servant is suspended, when there is no power of suspension, he can sue for damages for not being allowed to work, if he was ready to work. If, however, there is a power to suspend, the effect of the suspension is to suspend the contract of service as a whole, with the result that the servant cannot insist on working or claim his pay for the period of

(1) [1915] 1 K. B. 698.

suspension: *Wallwork* v. *Fielding* (1). The question in this case, therefore, is whether there was power to suspend. The express clause in the plaintiff's contract dealing with suspension (cl. 2) may not be helpful to the defendant on the ground that the charge of misconduct on his part was not finally established, he being finally acquitted, and he was suspended not on the ground of negligence. But cl. 3 made him bound by all general rules and regulations of Government service. The rules in Part III of the Fundamental Rules gave to his superiors, in this case the Divisional Superintendent, power to suspend pending an enquiry into his alleged misconduct. Thus as a matter of law the plaintiff cannot get anything by way of salary or damages for the period July 4, 1930 to February 27, 1931. He has been paid by the defendant $\frac{1}{4}$th of this salary as allowance for this period under the Fundamental Rules and he cannot claim anything more.

For the period February 28, 1931 to September 18, 1931 there was no order of suspension in force and the plaintiff would be entitled to his salary, unless it is shown that by his conduct or for some other reason he was deprived of this right. There can be no doubt that the plaintiff was always ready to rejoin his work. We have found that the effect of certain orders passed by the Divisional Superintendent was to terminate the period of suspension on February 27, 1931, but none of these orders were communicated to the plaintiff. The plaintiff did not join work on February 28, 1931, because on that date there was an order of dismissal passed against him. It is true that the order of dismissal was subsequently cancelled but it was this order and nothing else that prevented the plaintiff from joining work. The order cancelling his dismissal as from February 28, 1931 was also not communicated to him. The plaintiff, therefore, has done nothing

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which would deprive him of the right to get his salary for this period when the contract of service was in full force. We find, therefore, that he is entitled to pay at the rate of Rs. 93 per month for the period February 28, 1931 to September 18, 1931.

Then remain the period September 19, 1931 to January 18, 1932. When the order of acquittal was passed by this Court on the former date, the plaintiff at once asked for permission to rejoin work. This permission was refused. There was no order for suspension in existence during this period. The plaintiff having done all he could to perform his part of the contract he was certainly entitled to his pay for this period also at the rate of Rs. 93 per month.

Mr. Das for the respondent has, however, contended before us that the plaintiff is entitled to get full pay for the whole period from July 4, 1930 to January 18, 1932. He puts his contention in the following way. He says that the payment to him of a month's salary from January 19, 1932 amounts to reinstatement and under r. 54, Part III of the Fundamental Rules, his client is entitled to full pay for the whole period of suspension. We are unable to accept this contention for two reasons. Firstly, the said payment was in lieu of notice in terms of cl. 1 of the contract of service. It does not amount to reinstatement. He applied for reinstatement but his prayer was refused by the Agent on appeal. Secondly, the said rule provides that if a dismissed or suspended Government servant is reinstated on reconsideration or on appeal the revising or appellate authority may give him full pay for the period of his absence of duty. The civil Court cannot, in our judgment, substitute itself in the place of such departmental authority or the executive. To give redress in such a case, to use the language of Lord Roche, is the responsibility, and the sole responsibility of the executive Government. We cannot, accordingly, accede to Mr. Das's contention.

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The result is that the cross-objections are dismissed and the appeal decreed in part. The claim of the plaintiff for pay at the rate of Rs. 93 per month from February 28, 1931 to January 18, 1932 is decreed and the rest of his claim dismissed. The decree of the Subordinate Judge is to be modified accordingly. As the success is divided we direct the parties to bear their respective costs throughout.

Appeal decreed in part; cross-objections dismissed.

G. K. D.