

## ORIGINAL SIDE.

*Before Mr. Justice Cunliffe.*

J. A. D. NAYAGAM

v.

THE SECRETARY OF STATE FOR INDIA  
IN COUNCIL.\*

*Dismissal of Government Servant—Statutory Rules under Section 96B (2) of the Government of India Act, 1919 (9 & 10, Geo. V., C. 101, application of—“Judicial Trial,” meaning of.*

Under Classification Rule XIV (before its amendment in 1929) made under Section 96B (2) of the Government of India Act, where a Civil Court held that a Government servant had made a fraudulent claim and a false declaration in a civil action, Government was justified in dismissing that servant on such finding of the Civil Court, without any further departmental enquiry. The expression “Judicial trial” included all trials held before a competent Court and was not limited to a criminal trial.

*Plaintiff* in person.

*A. Eggar* (Government Advocate) for the Crown.

CUNLIFFE, J.—The plaintiff here, Mr. J. A. D. Nayagam, joined the service of the Government in this Province in the year 1906, according to his pleadings, and in April, 1925, he was removed from Government service with effect from the first week of the month. The removal was notified in an announcement in “*The Gazette*.” The reason why the Government took that course was that their attention was called to the remarks that had been made about the plaintiff in a civil action tried in this High Court by the late Sir Guy Rutledge.

The plaintiff had brought an action under a policy of insurance because certain premises, plant and so on, that he owned, had been burnt down, and

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\* Civil Regular Suit No. 336 of 1930.

one of the issues before that learned Judge was in these terms :—

“(3) Has the plaintiff been guilty of fraud and misrepresentation as alleged in paragraph 3 of the written statement? If so, is his claim under the policy forfeited under clauses 1 and 13 of the policy conditions?”

Sir Guy Rutledge heard evidence on both sides (Civil Regular No. 517 of 1922), and the plaintiff was represented by a very well known advocate of this Court, who is now no longer with us. In the judgment which was delivered on the 6th of September 1923 Sir Guy Rutledge said :—

“Consequently under condition 13 of the policy I am of opinion that the plaintiff has preferred a claim which, in several respects, is fraudulent, that he has made a false declaration in respect of these items, and that, by so doing, his benefit under the policy is forfeited.”

With that judgment against him the plaintiff went upon appeal. His appeal was heard by Sir Sydney Robinson, who was then the Chief Justice of this Court and by His Excellency the present Acting Governor Sir Joseph Maung Gyi who was at that time a Puisne Judge. The learned Chief Justice observing that “the only possible conclusion is that the claim was fraudulent; and that condition 13 of the policy applies to the case,” agreed with the Judge of the Court of first instance. Because of these two judicial findings as I have said the plaintiff was dismissed.

There is no doubt that there is a general power under the Common Law, which is based on public policy, allowing Government to dismiss their servants without giving any reasons why they should be dismissed. But at times Government themselves fetter their right by Statute, and in British India they have fettered their rights slightly under the Statutory Rules—Tenure of Government Servants.

1930

J. A. D.  
NAVAGANS.  
THE  
SECRETARY  
OF STATE  
FOR INDIA IN  
COUNCIL.

CUNLIFFE, J.

1930

J. A. D.  
NAYAGAM  
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FOR INDIA IN  
COUNCIL.  
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CUNLIFFE, J.

At the time when the plaintiff was dismissed, the Statutory Rule in force dealing with this matter was, in its material terms, in the following language :— Rule XIV. “ Procedure in cases of Dismissal, Removal or Reduction.”

“ Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, in all cases in which the dismissal, removal or reduction of any officer is ordered, the order shall, except when it is based on facts or conclusion established in a judicial trial, or when the officer concerned has absconded with the accusation hanging over him, be preceded by a properly recorded departmental enquiry . . . . .”

The learned Government Advocate here prays that part of Statutory Rule XIV in aid and he maintains and maintains rightly, in my view, that it is a complete bar to the plaintiff's action.

The answer which the plaintiff makes to that is that it was the intention of Government that the words “ judicial trial ” should really be limited to a criminal trial, and that they do not apply to the remarks, however apposite and however carefully considered they may be, in a civil action.

In my opinion that is a wrong view of the law. I think that the expression “ judicial trial ” includes all trials which are held before a competent Court. That disposes of the action.

In my view the Government were perfectly justified under the Government of India Act in dismissing the plaintiff in the way they did.

Accordingly I shall dismiss his suit on this preliminary point, but I shall make no order as to costs.