*Privy Council Appeal No.* 15 *of* 1936

**R. Venkata Rao** - - - - - - - *Appellant*

*v.*

**The Secretary of State for India in Council** - - *Respondent*

FROM

## THE HIGH COURT OF JUDICATURE AT MADRAS

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 8TH DECEMBER, 1936.

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*Present at the hearing:*

LORD ROCHE.
SIR SHADI LAL.
SIR GEORGE RANKIN.

[*Delivered by* LORD ROCHE.]

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This is an appeal against a decree dated 19th December, 1933, of the High Court of Judicature at Madras in its appellate jurisdiction affirming a judgment of the High Court in its original jurisdiction dismissing the action of the present appellant, the plaintiff in the action. The action was one claiming damages for wrongful dismissal from government service and the questions involved were whether the dismissal was in fact wrongful and in breach of the material rules of the service and, if so, whether the suit for damages was maintainable.

The facts of the case were these: The appellant in May, 1924, was a reader in the Government Press, Madras, and as such reader held office in the civil service of the Crown in India. In May, 1924, he fell under suspicion of being concerned in a leakage of information in respect of pleadership examination papers. The appellant consistently and stoutly denied the charge. The matter was investigated and at first the appellant was directed to vindicate his character in a court of law. He proceeded to do so by action for libel against a candidate for examination who was said to have informed against him. In this action he ultimately got judgment by default for nominal damages. But before the case was determined the appellant was on 23rd August, 1924, suspended, and on 22nd September dismissed from the service. An appeal to the Madras Government by memorial was rejected. The present suit was brought on 17th December, 1927. In the plaint, as in the memorial to government, the appellant in addition to his arguments as to innocence in

fact complained that the dismissal was contrary to the statute inasmuch as it was not preceded by any such enquiry as is prescribed by rule XIV of the Civil Services Classification Rules made thereunder. The material section of the statute (Government of India Act, 1919), is section 96B, which reads as follows :—

" (1) 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, and may be employed in any manner required by a proper authority within the scope of his duty, but no person in that service may be dismissed by any authority subordinate to that by which he was appointed, and the Secretary of State in Council may (except so far as he may provide by rules to the contrary) reinstate any person in that service who has been dismissed.

" If any such person appointed by the Secretary of State in Council thinks himself wronged by an order of an official superior in a governor's province, and on due application made to that superior does not receive the redress to which he may consider himself entitled, he may, without prejudice to any other right of redress, complain to the governor of the province in order to obtain justice, and the governor is hereby directed to examine such complaint and require such action to be taken thereon as may appear to him to be just and equitable.

" (2) The Secretary of State in Council may make rules for regulating the classification of the civil services in India, the methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct. Such rules may, to such extent and in respect of such matters as may be prescribed, delegate the power of making rules to the Governor-General in Council or to local governments, or authorise the Indian legislature or local legislatures to make laws regulating the public services:

" Provided that every person appointed before the commencement of the Government of India Act, 1919, by the Secretary of State in Council to the civil service of the Crown in India shall retain all his existing or accruing rights, or shall receive such compensation for the loss of any of them as the Secretary of State in Council may consider just and equitable.

" (3) The right to pensions and the scale and conditions of pensions of all persons in the civil service of the Crown in India appointed by the Secretary of State in Council shall be regulated in accordance with the rules in force at the time of the passing of the Government of India Act, 1919. Any such rules may be varied or added to by the Secretary of State in Council and shall have effect as so varied or added to, but any such variation or addition shall not adversely affect the pension of any member of the service appointed before the date thereof.

" Nothing in this section or in any rule thereunder shall prejudice the rights to which any person may, or may have, become entitled under the provisions in relation to pensions contained in the East India Annuity Funds Act, 1874.

" (4) For the removal of doubts, it is hereby declared that all rules or other provisions in operation at the time of the passing of the Government of India Act, 1919, whether made by the Secretary of State in Council or by any other authority, relating to the civil service of the Crown in India, were duly made in accordance with the powers in that behalf, and are confirmed, but any such rules or provisions may be revoked, varied, or added to by rules or laws made under this section.

" (5) No rules or other provisions made or confirmed under this section shall be construed to limit or abridge the power of the Secretary of State in Council to deal with the case of any person in the civil service of the Crown in India in such manner as may

appear to him to be just and equitable, and any rules made by the Secretary of State in Council under subsection (2) of this section delegating the power of making rules may provide for dispensing with or relaxing the requirements of such rules to such extent and in such manner as may be prescribed:

"Provided that where any such rule or provision is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by the rule or provision."

Amongst the rules made or confirmed under the above section are certain Classification Rules of which the following are the most material:—

"XIII. Without prejudice to the provisions of any law for the time being in force, the Local Government may for good and sufficient reasons—

"(1) censure,

"(2) withhold promotion from,

"(3) reduce to a lower post,

"(4) suspend,

"(5) remove, or

"(6) dismiss

any officer holding a post in a provincial or subordinate service or a special appointment.

"XIV. 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 conclusions established at a judicial trial, or when the officer concerned has absconded with the accusation hanging over him, be preceded by a properly recorded departmental enquiry. At such an enquiry a definite charge in writing shall be framed in respect of each offence and explained to the accused, the evidence in support of it and any evidence which he may adduce in his defence shall be recorded in his presence and his defence shall be taken down in writing. Each of the charges framed shall be discussed and a finding shall be recorded on each charge.

"XV. A Local Government may delegate to any subordinate authority, subject to such conditions, if any, as it may prescribe, any of the powers conferred by rule XIII in regard to officers of the subordinate services.

"XVI. Every officer against whom an order may be passed under rules X, XIII and XV, and who thinks himself wronged thereby shall be entitled to prefer at least one appeal against such order.

"XXVIII. The Secretary of State may call for any appeal withheld by the Local Government or the Government of India which under the rules may be made to him and may pass such orders as he considers fit; the Governor-General in Council may send for an appeal withheld by the Local Government which under the rules may be made to him, and may pass such orders as he considers fit."

The respondent's written statement alleged that rule 14 was substantially complied with and also raised questions of law as to the right of dismissal at pleasure and as to the suit not being maintainable. The matter first came before Beasley J. who treated it as coming before him on a preliminary issue which assumed that no enquiry in accordance with rule 14 had in fact been held. Thinking quite rightly that the questions of law were of the greatest importance the learned Judge referred the matter to the Full Bench. When the case came on before the Full Bench the defendant's counsel said

that he was prepared to prove that an enquiry had been held which complied substantially with the provisions of rule 14 and asked for an opportunity of establishing that defence. This was granted and the case was sent back and was heard by Waller J. He took the evidence and after so doing found as follows :—

> " There was, it is true, some sort of enquiry, but it was most certainly not of the sort prescribed by the rule. I say nothing about the omission to frame a charge; it being clear that the plaintiff knew perfectly well what the charge against him was; but in every other respect the enquiry was defective. Witnesses were examined but not in the presence of the plaintiff and he seems to have been dismissed mainly on the strength of a written statement made by one Sitaramayya not in his presence. I find that the requirements of rule 14 were not satisfied."

The learned Judge decided the questions of law against the appellant and dismissed the suit, but decided that in the circumstances the costs should be borne by the defendant. The appeal against this decision was heard at the same time as the appeal in *Rangachari's* case (No. 1 of 1931) in which their Lordships have just pronounced judgment. The Court consisting of the Chief Justice and Bardswell J. agreed with the court below on the question of fact saying that the procedure prescribed by the rule was not followed at all. But as they also agreed with the court below on the questions of law they dismissed the appeal.

On the issue of fact which was expressly raised by the defendant their Lordships think that the findings of the courts below were abundantly justified and were indeed inevitable. A most definite and salutary rule was disregarded in most essential respects and the contention which was in effect that what was done was " well enough " is a contention mischievous in tendency and ill-founded in fact. An excuse was made that the procedure prescribed was not followed because there was no power to compel the attendance of witnesses not in government service. This excuse was not accompanied by any allegation or proof that an attempt to secure the attendance of such witnesses was made and that the attempt had failed.

Their Lordships now pass to consider the questions of law raised in the appeal. The contention for the appellant was and is that the statute gives him a right enforceable by action to hold his office in accordance with the rules and that he could only be dismissed as provided by the rules and in accordance with the procedure prescribed thereby. The respondent's contention, and the decision of the courts below, is that there is no such actionable right conferred by the statute.

There are two decisions of this Board much discussed in the courts below which state the principles to be applied to cases such as this. The first is *Shenton* v. *Smith* [1895] App. Cas. 229, relied upon by the respondent and the other is *Gould* v. *Stuart* [1896] App. Cas. 575, relied upon for the appellant. In the first case Dr. Smith held office in the government medical service in Western Australia and relied

upon certain rules and regulations of the service as an essential part of his contract of service. He was dismissed and brought an action for damages which failed. Upon appeal to Her Majesty in Council, Lord Hobhouse, in giving their Lordships' judgment, said :—

> "It appears to their Lordships that the proper grounds of decision in this case have been expressed by Stone J. in the Full Court. They consider that, unless in special cases where it is otherwise provided, servants of the Crown hold their offices during the pleasure of the Crown; 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. If any public servant considers that he has been dismissed unjustly, his remedy is not by a law-suit, but by an appeal of an official or political kind . . . As for the regulations, their Lordships again agree with Stone J. that they are merely directions given by the Crown to the Governments of Crown Colonies for general guidance, and that they do not constitute a contract between the Crown and its servants."

A special case such as was contemplated in the above cited passage occurred in *Gould's* case where the Board, consisting of three members two of whom had sat in *Shenton's* case, held that the respondent Stuart held office in New South Wales under certain conditions expressly enacted in the body of the New South Wales Civil Service Act, 1884, and that these express provisions of the statute were "inconsistent with importing into the contract of service the term that the Crown may put an end to it at its pleasure."

The question is: Does the present case fall into the general category defined and illustrated by *Shenton's* case or the more exceptional category defined and illustrated by *Gould's* case? On the facts it stands somewhere between the two cases inasmuch as here the rules are expressly and closely related to the employment by the statute itself. In these circumstances difference of judicial view in India has manifested itself. There are decisions favourable to the present appellant in *Satish Chandra Das* v. *Secretary of State for India* (I.L.R. 54 Cal. 44); in *Baroni* v. *Secretary of State for India in Council* (I.L.R. 8 Rang. 215); and to some extent also in *Bimalacharan* v. *Trustees for the Indian Museum* (I.L.R. 57 Cal. 231). On the other hand both courts in the present case have adopted the contrary view. In their Lordships' opinion the judgments in the courts below express the correct view. The reasons which have led their Lordships to this conclusion may be shortly stated. Section 96B, in express terms states that office is held during pleasure. There is therefore no need for the implication of this term and no room for its exclusion. The argument for a limited and special kind of employment during pleasure but with an added contractual term that the rules are to be observed is at once too artificial and too far-reaching to commend itself for acceptance. The rules are manifold in number and most minute in particularity and are all capable of change. Counsel for the appellant nevertheless contended with most logical consistency that on the appellant's contention an action would lie for any breach

of any of these rules, as for example of the rules as to leave and pensions and very many other matters. Inconvenience is not a final consideration in a matter of construction but it is at least worthy of consideration and it can hardly be doubted that the suggested procedure of control by the courts over government in the most detailed work of managing its services would cause not merely inconvenience but confusion. There is another consideration which seems to their Lordships to be of the utmost weight. Section 96B and the rules make careful provision for redress of grievances by administrative process and it is to be observed that sub-section 5 in conclusion reaffirms the supreme authority of the Secretary of State in Council over the civil service. These considerations have irresistibly led their Lordships to the conclusion that no such right of action as is contended for by the appellant exists. It is said that this is to treat the words "subject to the rules" appearing in the section as superfluous and ineffective. Their Lordships cannot accept this view and have already referred to this matter in their judgment in *Rangachari's* case. They regard the terms of the section as containing a statutory and solemn assurance that the tenure of office though at pleasure will not be subject to capricious or arbitrary action but will be regulated by rule. The provisions for appeal in the rules are made pursuant to the principle so laid down. It is obvious therefore that supreme care should be taken that this assurance should be carried out in the letter and in the spirit and the very fact that government in the end is the supreme determining body makes it the more important both that the rules should be strictly adhered to and that the rights of appeal should be real rights involving consideration by another authority prepared to admit error, if error there be, and to make proper redress, if wrong has been done. Their Lordships cannot and do not doubt that these considerations are and will be ever borne in mind by the governments concerned, and the fact that there happen to have arisen for their Lordships' consideration two cases, where there has been a serious and complete failure to adhere to important and indeed fundamental rules, does not alter this opinion. In these individual cases mistakes of a serious kind have been made and wrongs have been done which call for redress. But while thus holding on the clear facts of this case, as they now appear from the evidence, as they similarly held in *Rangachari's* case, their Lordships are unable as a matter of law to hold that redress is obtainable from the courts by action. To give redress is the responsibility, and their Lordships can only trust will be the pleasure, of the executive government. Their Lordships in these circumstances and taking this view of the effect of section 96B of the statute do not deem it necessary to discuss at length certain other grounds assigned for their conclusions by the Judges in the courts below. Their Lordships, however, deem it right to say that as at present advised they do not think that the Public Servants Inquiry Act of 1850 has any bearing on this action

or upon *Rangachari's* action. These appellants do not seem to be servants falling within the scope of that Act, nor does a stipulation that the absence of an enquiry under that Act is not a bar to the removal of a servant constitute any reason why the absence of an enquiry under these rules should not be a bar to removal. The reasoning of the courts below as to section 32 of the India Act, 1919, and its effect and bearing on these actions is another matter to which their Lordships must not be taken to give their assent. As at present advised their Lordships are not disposed to think that this section, which is a section relating to parties and procedure, has an effect to limit or bar the right of action of a person entitled to a right against the Government, which would otherwise be enforceable by action against it, merely because an identical right of action did not exist at the date when the East India Company was the body if any to be sued. If it had appeared that the plaintiff's service under the Act of 1919 was not terminable at pleasure their Lordships are not prepared to say that remedy by suit against the Secretary of State in Council for a breach of the contract of service would not have been available to the plaintiff. Breach of contract by the Crown can in England be raised by petition of right. The fact that for a different reason—namely that service under the East India Company was at pleasure—a precisely similar suit could not have been brought against the company does not in their Lordships' view conclude the matter either under clause 2 of section 32 of the Act or on the reasoning of Sir Barnes Peacock in *P. & O. Steam Navigation Co.* v. *Secretary of State* (1861) 5 Bom. High Court Reports (App.) 1.

For these reasons their Lordships will humbly advise His Majesty that this appeal, which by special leave was brought *in forma pauperis*, should be dismissed. There will be no order as to costs.

(39413—3A) Wt. 8136—2 180 12/36 P. St. G. 338

In the Privy Council.

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R. VENKATA RAO

*v.*

THE SECRETARY OF STATE FOR INDIA IN COUNCIL

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DELIVERED BY LORD ROCHE.

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