PRIVY COUNCIL

R.T. Rangachari

Vs.

Secretary of State

Privy Council Appeal No. 14 of 1936
(Lord Roche, Sir ShadiLal and Sir George Rankin JJ.)

08.12.1936

JUDGMENT

LORD ROCHEJ.

1. This is the appeal of the plaintiff in the action against a decree of the High Court of Madras, in its appellate jurisdiction, dismissing an appeal against a decree of the High Court in its original jurisdiction whereby the action of the plaintiff had been dismissed and judgment had been entered for the defendant. The facts giving rise to the litigation are as follows: Prior to and in the month of July 1927, the appellant was a Sub-Inspector of Police in the Presidency of Madras. Certain charges of irregular and improper conduct in the execution of his duties as a Police Officer were made against him and were the subject of an official inquiry conducted by a *Mr. Charsley,* an Assistant Superintendent of Police for the district in which the appellant was serving. This inquiry was held in the manner required by Rule 14 of the Statutory Rules, 1924, Nos. 354 and 355 (the Civil Services Classification Rules), made under section 96-B (2), Government of India Act, 1919. *Mr. Charsley* had concluded his inquiry on 7th September. At that date the Acting District Superintendent of Police was a Mr. Kalimullah who had taken charge of the District in August and continued in charge until the latter part of October, when he was succeeded by a Mr. Loveluck. The appellant had for sometime prior to 7th September been in bad health and on that date when *Mr. Charsley*finished the inquiry the appellant had applied to him in the following terms:

> I beg to submit that I am growing worse with my hernia and I am unfit for further service. I pray that I may kindly be placed before the District Medical Officer for being invalid.

2. This request was transmitted to Mr. Kalimullah by Mr. Charsley with a statement that:

> He (the appellant) may be sent before the District Medical Officer with a requisition. It appears to be true that he has a bad rupture. I have completed the inquiry against him.

3. On 9th September there was an important conference between Mr. Charsley and Mr. Kalimullah as to the course to be adopted with regard to the appellant. The result seems to their Lordships to be now quite clear and their Lordships agree with the findings of both Courts below which are in substantial agreement in all material respects. Two courses were under consideration: disciplinary action such as dismissal on the one hand and on the other retirement for health reasons on pension. Mr. Charsley's view was adverse to the appellant and he thought that the charges were established and so informed Mr. Kalimullah, but he recognised, as was the fact, that the decision rested with Mr. Kalimullah and not with him. Mr. Kalimullah, after giving the matter careful consideration and after full discussion with Mr. Charsley, arrived, in all good faith, as both Courts have found, at the decision that the evidence was doubtful and inconclusive and that the charges should be dropped and that accordingly the appellant, subject to a medical certificate, which on the known facts it was anticipated would be granted, should be allowed to retire on grounds of health and that an invalid pension should be awarded to him. There is no dispute that Mr. Kalimullah was fully competent so to drop the charges and to come to the determination to which both Courts have found that he did come with perfect honesty. Mr. Charsley quite properly bowed to the decision though safeguarding himself with a statement that he would send in his report. He did so on 2nd October and like the view he orally expressed on 9th September it was adverse to the appellant. Meanwhile on 16th September a medical certificate was granted and on 13th October the pension roll was signed by Mr. Moore, the Deputy Inspector-General of Police, sanctioning the granting of an invalid pension of Rs. 41 a month, and on 4th November the appropriate authorisation for payment of the pension to date from 17th September was issued from the office of the Accountant-General. Mr. Moore had been told by Mr. Charsley on 9th September about the charges against the appellant and of Mr. Kalimullah's view that he should nevertheless be invalided out of the service. The appellant in fact retired from the service and his pension was paid to him for the months of September, October and November. The trouble which arose with regard to it subsequently was due to the following circumstances:

Mr. Charsley's report had been put aside in the office and not brought before Mr. Kalimullah by his subordinates. Had it been so brought before him there is no probability that he would have altered the decision or the course of action upon which he had determined upon the same material on 9th September, but he might, and apparently ought to have made a record of his decision in respect of the report and this he did not do. Accordingly, when he went out of office and Mr. Loveluck succeeded him and saw the report, there was not unnaturally both suspicion and trouble. The adverse view of Mr. Charsley in writing was given more weight than the unrecorded reasons of Mr. Kalimullah for forming a more lenient and more cautious judgment as to the extent to which the charges made could be or were supported by reliable evidence. The view taken was that the report ought to have been put before the Pensions Authorities or before the Deputy Inspector-General who was asked to authorise the pension. Their Lordships are not in a position to say whether this view is correct as a matter of departmental practice, but it is clear that if there was a neglect of proper procedure it was not due to any want of good faith. As has been already stated, the then Deputy Inspector General, Mr. Moore, was told, according to Mr. Charsley, of his enquiry and of his view of the matter and of his proposed report. This, however, was not so plain at the time as it has now become and indeed was probably unknown to Mr. Loveluck who succeeded Mr. Kalimullah and to Mr. Filson who by this time had succeeded Mr. Moore. The upshot was that the pension was first suspended for further consideration and that on 28th February 1928 Mr. Filson issued an order purporting to remove the appellant from the service from the date upon which he was invalided. The grant of pension was also annulled or put an end to. The appellant memoralized the Government of Madras against this decision basing his prayer for relief from the cancellation of the order stopping his pension upon the simple ground that the matter had been decided by a competent authority and could not be re-opened. There was a discussion at the time whether the appellant's proper procedure under the rules should not have been by appeal rather than by memorial, but on the argument before their Lordships no point was made of this and it was agreed that the substantial matter was brought before Government by the appellant's memorial and that relief was refused and that a further memorial to the Government of India was withheld by the Madras Government pursuant to a discretion vested in it by the material rules. The present action was then brought.

4. The first question is, has the appellant suffered a wrong, that is to say is his complaint well founded in fact ? If it is, then a second question arises, namely, is the wrong actionable and ought the appellant to have succeeded in this action? The answer to the first question seems to their Lordships plainly to be in the affirmative. It is not contended that Rule 351 of the Pensions Rules relating to conduct had any bearing on the matter or justified withdrawal of the pension. But their Lordships appreciate that for reasons which have already been indicated, irregularity or slackness of procedure may have given rise to suspicions of good faith which the investigation of the subject in this action has, or ought to have, entirely removed. In these circumstances the case becomes a case in which after Government officials duly competent and duly authorised in that behalf have arrived honestly at one decision, their successors in office, after the decision has been acted upon and is in effective operation, purport to enter upon a reconsideration of the matter and to arrive at another and totally different decision. It seems to require no demonstration that an order purporting to remove the appellant from the service at a time when, as their Lordships hold, he had for some months duly and properly ceased to be in the service, was a mere nullity and cannot be sustained. It follows that in their Lordships' view the appellant had, and has, every right to complain of the stoppage of the pension as a breach of the rules relating to pensions. Both Courts below so held and their Lordships are in entire agreement with their decision on this point.

5. The second point as to the right of action therefore arises. Both Courts below have decided that the Courts cannot give the relief prayed and that the action fails. The main ground of their decision is that the action is one which, by virtue of the provisions of the Pensions Act of 1871, a civil Court is prohibited from entertaining. It is necessary to see precisely what the relief claimed was and to see what the relevant statutory provisions are. By the plaint the appellant prayed a decree for a declaration that the plaintiff was not liable to be removed from the service subsequent to his retirement and also claimed damages and other relief. At the trial all claims except that for a declaration were dropped. The trial Judge thought he could not and ought not to make such a declaration and the Judges on appeal were of the same opinion. In both Courts the conclusion was reached that in substance the claim was for a declaration that the appellant was entitled to his pension and so in their Lordships' judgment it was. Section 4, Pensions Act (23 of 1871), reads as follows:

> Except as hereinafter provided, no civil Court shall entertain any suit relating to any pension or grant of money or land revenue conferred or made by the British

> or any former Government, whatever may have been the consideration for any such pension or grant, and, whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted.

6. Section 6 which empowers a civil Court in certain circumstances to take cognizance of certain matters as to pensions provides as follows :

> But (the Court) shall not make any order or decree in any suit whatever by which the liability of Government to pay any such pension or grant as aforesaid is affected directly or indirectly.

7. The Courts below held that having regard to the essential nature of this action it was within the prohibitions above set out. It was hardly disputed before their Lordships that this would be the correct view but for the enactment of the Act of 1919. The main force of the argument for the appellant was directed to the support of a proposition which may be shortly stated as follows: By the terms of Section 96-B of the Act of 1919 the pensions rules are made statutory and of the same force as if they were set out in the statute itself.; also by the terms of the section, persons in the Civil Service of the Crown in India hold office not simply at pleasure but on the terms set out both in the section and in all the rules made thereunder including the pensions rules: further it was said that since a statutory right is thus created between the Crown and the servant, it is necessarily to be implied that any provisions in any antecedent Statute repugnant to the terms of the Statute creating such right are repealed or rendered inapplicable to such a case. With regard to the first part of this argument, namely, as to the effect of the Statute of 1919 and in particular as to whether it confers a right of action to enforce the rules made thereunder, their Lordships, in giving their advice to His Majesty in appeal No. 15 of 1936 (*VenkataRao v. Secy. of State, VenkataRao v. Secy. of State, AIR 1937 PC 31*), which was argued at the same time as this appeal, will have to enter more at length into their reasons for rejecting such an argument. It is sufficient to say here that in their Lordships' opinion it is untenable. The next step seems even more difficult for the appellant and their Lordships are quite unable to hold that by reason of any repugnancy and implied repeal the provisions of the Pensions Act are rendered inapplicable to the present action.

8. There is however another point raised and in the Courts below decided adversely to the plaintiff which has given their Lordships considerable anxiety. Section 96-B contains the following proviso:

> But no person in that service (the Civil Service of the Crown) may be dismissed by any authority subordinate to that by which he was appointed.

9. The purported dismissal of the appellant on 28th February 1928 emanated from an official lower in rank than the Inspector-General who appointed the appellant to his office. The Courts below held that the power of dismissal was in fact delegated and was lawfully delegated to the person who purported to exercise it. Counsel for the respondent candidly expressed a doubt as to the possibility of maintaining this view and indeed it is manifest that if power to delegate this power could be taken under the rules, it would wipe out a proviso and destroy a protection contained not in the rules but in the section itself. Their Lordships are clearly of opinion that the dismissal purporting to be thus ordered in February was by reason of its origin bad and inoperative. Their Lordships have most anxiously considered whether some relief by way of declaration to this effect should not be granted. It is manifest that the stipulation or proviso as to dismissal is itself of statutory force and stands on a footing quite other than any matters of rule which are of infinite variety and can be changed from time to time. It is plainly necessary that this statutory safeguard should be observed with the utmost care and that a deprivation of pension based upon a dismissal purporting to be made by an official who is prohibited by statute from making it rests upon an illegal and improper foundation. But although their Lordships differ in this important matter from the reasoning and conclusions of the Courts below they are not on the whole prepared to direct that a declaration on this point should be made.

10. The questions of fact and law are now decided and a declaration could have no greater effect than the decision itself. After this lapse of time and having regard to his health no one suggests that the appellant can now be restored to his office and the matter of pension and the responsibility of doing right in that regard rests with the Government. Accordingly their Lordships agree in the view of the Courts below that no order or declaration should be made in this action. It was urged that unless the rights of the appellant could be enforced by action, the provisions of section 96-B and of the rules to which force was thereby given would be nugatory and useless. Their Lordships cannot take that view. They cannot doubt that the Charter and the pledge contained in the Statute and in the consequential rules are generally observed and fulfilled, and though in this instance for reasons which are comprehensible but as now appears are insufficient, this has so far unfortunately not proved to be the case there is yet both time and opportunity for the appropriate action to be taken by the executive now that the important questions of principle are disposed of. Their Lordships are dealing with various other and minor points which arose in this case, such as the effect of Section 32 of the Act of 1919, in their judgment in the *appeal No. 15 of 1936*

(VenkataRao v. Secy. of State) and it is unnecessary to repeat the observations there made. Their Lordships will humbly advise His Majesty that the appeal ought to be dismissed. The appeal was in forma pauperis and there will be no order as to costs.

Appeal dismissed.