

CALCUTTA HIGH COURT

Sarat Chandra Das

Vs

Secretary of State For India In

(Stephen, J.)

16.12.1910

JUDGMENT

Stephen, J.

1. This suit is brought by the plaintiff for a declaration that he is entitled to receive from the defendant payment of Rs. 300 a month for the rest of his life, and to recover from him a sum of Rs. 8,610 representing the balance of this sum that is due to him on the default of the defendant to pay him this amount since the 25th May 1902. The facts of the case are peculiar, and it is admitted that shortly they are as follows: In 1881 the plaintiff was acting as a school master in the employment of the Education Department of the Government of India at Darjeeling. In that year he was employed by the defendant to undertake a highly dangerous journey into Tibet and to make certain inquiries there, the result of which, if the expedition were successful, would be useful to the Government. The terms on which he was employed are contained in a document dated the 4th September, 1881, signed by Mr. Cockerell, who was at that time Secretary to the Government of Bengal, and was authorised to act in the matter for the defendant. The document begins: "The conditions upon which Babu Sarat Chandra Das, Deputy Inspector of Schools (at) Darjeeling will proceed to Tibet are the following." His duties are then set out and are, briefly to go to Lhasa, see as much of the country as he can, and return to India in about a year if he can manage to do so. He is to receive articles to the value of Rs. 5,000 wherewith to defray his expenses. Paragraph 3 of the document then goes on From the 1st September, 1881, his pay will be raised during good behaviour to Rs. 300 a month" and arrangements are made, with which we are not concerned, as to how Rs. 300 a month was to be paid to him during his absence, and what was to happen in case of his death before his return to British India. He carried out his instructions and returned to Darjeeling on the 27th December, 1882. The case made in the plaint is that from that date he served the Government of India on deputation, being nominally in the Education service, though he repeatedly applied to the Government to be treated as actually a member of the Education service, so as to become entitled to the emoluments and promotion to be expected by a man in that position. This state of things continued till September, 1902, when in spite of his protests, he was compelled to revert to the Education service as a preliminary to making him retire as a member thereof. He was so retired, apparently in 1904, though this is not stated in the plaint, after having been placed on furlough in February 1902. He continued to draw Rs. 300 a month from the beginning to the 25th May 1902, since when he has received only Rs. 150 a month.

2. The defendant now argues that the plaint discloses no cause of action and that the suit must be dismissed accordingly. His case is that the plaintiff claims the Rs. 300 a month either as pension or pay. If he claims it as pension he is met by Section 4 of the Pensions Act, 1871, which provides that 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." If he claims it as pay the defendant has a right to dismiss him at pleasure, consequently he may dismiss him on such terms as he sees fit. Further, in England the Crown is not bound by a contract of service; it can dismiss its servants at will, and is not bound to pay salary, pension, or other remuneration for any services rendered either past or future; and the East India Company was, and consequently the Secretary of State now is, in the same position.

3. To this the plaintiff replies that the Crown in England is bound by contracts of service as a private individual would be except that where the contract enables the servant to exercise delegated sovereign powers the Crown may dismiss him at pleasure. Even though a public servant is liable to be dismissed at pleasure, yet if he is not dismissed during his public service he is entitled in England to enforce his rights under the contract by a petition of right. In India the East India Company could, and the Secretary of State can enter into contracts by which they are bound provided the contract is one which could be entered into by a private individual, and the contract does not support to be entered into in the exercise of sovereign rights. In India the Secretary of State is legally bound by such contracts by force of 21 and 22 Vict. Ch. 106, Section 65, and the Pensions Act does not impair the contractor's rights, and does not in terms apply to this case.

4. In these circumstances the first thing I have to decide is whether the case is governed by Section 4 of the Pensions Act; that is whether on the plaint as I have described it, the plaintiff is claiming Rs. 300 a month as pension in the terms of that section.

5. The defendant's case is he is doing so because the opening words of the plaint show that he was in the employment of the defendant at the time of the contract, and para. 10 where he sets out what subsequently happened to him, shows that he never left that service till he was retired, but on the contrary asked to be re placed in his former branch of it whereby his prospects would have been materially improved, if, that is, his reinstatement in the Education service had taken place early enough to enable him to secure promotion. The plaintiff served the defendant continuously till 1902 or 1904, any payment made after his services had ceased must, therefore, be taken as made in consideration of that service, and is, therefore, a pension in the most usual sense of that word; and any claim to it is a claim to a pension.

6. To this the plaintiff replies in argument that the service of the plaintiff in Tibet must be taken as wholly independent of any other service that he may at any time have rendered to the Government. An expedition of the character of that undertaken by the plaintiff is so widely different from the ordinary duties of a member of the Education service that it must be taken on the same footing as if it had been rendered by a stranger, and as soon as it was concluded safely and according to the terms of the defendant's instructions, the consideration was earned however

it was to be paid and whatever might happen afterwards. He was not bound to continue to serve the Government, and the present claim is not one for pension, but for an annuity which may for present purposes be taken as representing a lump sum of money payable at the end of the expedition.

7. The plaintiff urges that the term "during good behaviour" used in para. 3 of the document of 4th September 1881, is equivalent to "for life," and as far as the present argument is concerned the defendant admits that this must be taken to be so; as it would have thus effect in the absence of any proof of want of good behaviour, an issue which it would be for the defendant to prove; and which, of course, it is not now open to me to consider.

8. It may be fair to both parties to point out that the defendant has pleaded that the plaintiffs' actions and conduct have not been such as to fulfil the condition of good behaviour; but this plea was withdrawn at the commencement of the hearing.

9. On considering the arguments that have been addressed to me on this part of the case, which turns, of course, merely on the meaning I attach to the plaint, including the document of 4th September 1881, I find that those of the defendant must prevail. The terms of the document are "that his (the plaintiffs) pay will be raised," which according to the defendant's contention I must read as equivalent to "he shall receive." During his absence in Tibet he is to receive salary, and I cannot but regard this as a payment of the same kind as that which he had already been receiving in the Education service. According to his own case he was in the service of the Government of India on deputation for some twenty years after his return from Tibet and repeatedly asked to be treated as a member of his former branch of Government service, which seems to me to go to show that he is treating the whole of his service under Government as one service, and that he cannot separate the expedition from the service before and after it took place. He reverted to the Education service in 1902 and was retired in 1904, but as he seems not to have acquiesced in what was then done, and had, I suppose, no choice in the matter, I do not think these facts are of much importance.

10. The conclusion seems to me inevitable that he must be taken to have been in Government service during the whole of the time I have mentioned; and that anything payable to him after the termination of that service is in the nature of what is commonly understood as a pension. This being so, I am unable to avoid the conclusion that any payment which the defendant is bound by the terms of the document of 4th September, 1881, to make to the plaintiff after the termination of his service is a pension as it is ordinarily understood. The plaintiff has attempted to argue that it is not a pension within the terms of Section 4 of the Pensions Act; but the terms of that enactment relating to pensions, seem to be amply to cover the present case, though they have been carefully framed so as to cover a great many others.

11. The plaintiff's suit must accordingly fail on this point and it is unnecessary that I should express any opinion on how far the numerous authorities dealing with the liability of the Crown and the Secretary of State to be sued on contracts of service apply to the present case.

12. The case is accordingly dismissed.