(1937) 04 MAD CK 0043

In the Madras High Court

T.C. Nilamegham Pillai and Another APPELLANT

Vs

Secretary of State RESPONDENT

Date of Decision : 05-04-1937

Acts Referred:

Citation : AIR 1937 Mad 777 : (1937) 46 LW 242

Hon'ble Judges : Varadachariar, J

Bench : Division Bench

Judgement

Varadachariar, J.—The appellant who had been appointed Income Tax Officer in June 1922 was dismissed from service by an order of the Commissioner, dated 22nd June 1925. He filed this suit for damages, contending that this order of dismissal was illegal, void and ultra vires.

2. The validity of the order was challenged on two grounds: (1) that the Commissioner did not hold a proper enquiry before passing the order of dismissal and (2) that in view of the provisions of Section 96-B, Government of India Act, 1919, the Commissioner was not competent to pass the order of dismissal. Before the lower Court, the first of the above contentions was advanced on the assumption that the plaintiff would have been dismissed only aftar enquiry in the manner prescribed by Rule 14 of the Civil Service Classification Rules. The learned Subordinate Judge was of opinion that that rule was not applicable to persons appointed under the Income Tax Act of 1922. This question has now become immaterial, because, even assuming that the procedure prescribed by that rule or any other rule has not been followed, a Civil Court is not competent to give redress to a person on that ground, after the decision of the Privy Council in AIR 1937 31 (Privy Council) . An argument was urged before us, on behalf of the appellant, that in that decision as well as in the connected case, their Lordships were only dealing with the nature of the tenure on which civil servants in India hold their office and did not decide the question as to the cause of action available to a civil servanton the ground that in the matter of his dismissal the prescribed procedure had not been followed. We are unable to agree with that

contention. The first question dealt with by them was no doubt the nature of the tenure; but having arrived at the conclusion that civil servants in this country hold their office at the pleasure of the Crown, their Lordships next did address themselves to the question of the effect of the reference in the opening part of Section 96-B to the rules made thereunder as qualifying the declaration of the tenure of the office. It is in dealing with this argument, that their Lordships say that while a solemn duty is laid upon the Government to observe these rules when dealing with the matter of the dismissal of an officer, the failure to do so will nevertheless hot furnish a cause of action for a civil suit.

3. It was also contended before us, on the strength of a passage in Mr. Sundaram''s book on the Law of Income Tax, that the Commissioner is subject to the control of the Local Government as much in the matter of dismissing an Income Tax Officer as in the matter of appointing one. It was accordingly suggested that as the dismissal in this case did not appear to have been made with the previous approval of the Local Government, the dismissal was void in law. We propose to deal at some length with a cognate argument when dealing with the next contention of the appellant. We may, however, observe here that in the Devolution Rules specific provision has been made in this connexion only in respect of the appointment of Assistant Commissioners and Income Tax Officers, delegating the power of the Governor-General in that behalf u/s 5, Income Tax Act, to the Governor in-Council. The only specific reference to the question of dismissal, in the Devolution Rules is by way of giving a right of appeal to the Governor-General in Council (formerly to the Governor in Council), to any Assistant Commissioner or Income Tax Officer who has been dismissed or removed from office by the Commissioner. The reference to a right of appeal is a clear indication that it could not have been contemplated that the dismissal should be with prior approval obtained from the same authority; it is only in respect of ''appointment'' that the previous approval is referred to in the Devolution Rules.

4. In dealing with the second contention urged on behalf of the appellant, we are prepared to assume that the appellant may, in view of the judgment of the Judicial Committee in AIR 1937 27 (Privy Council) be entitled to some relief, if it could be said that the Commissioner who dismissed the appellant is within the meaning of Section 96-B, Government of India Act, an authority "subordinate to that by which he (the appellant) was appointed." The determination of this question turns on the construction of Section 5, Income Tax Act, 1922. It is there provided that Assistant Commissioners and Income Tax Officers shall, subject to the control of the Governor-General in Council, be appointed by the Commissioner of Income Tax by order in writing. The natural meaning of the words used seems to us to be that the Commissioner of Income Tax is the appointing authority, though by way of appeal or by veto or even by an executive rule as to previous approval, his exercisa of this power may be subject to interference by the Governor-General in Council. Under rules framed u/s 45-A, Government of India Act, the control of the Governor-General in Council

(provided for in Section 5, Income Tax Act,) has been delegated to the Local Government by the following rule:

The Governor-General in Council desires to utilise the agency of the Governor in Council of each Governor''s Province in the following matters only in relation to income tax: (i) The appointment by a Commissioner of Income Tax of any person to the substantive post of Assistant Commissioner of Income Tax or Income Tax Officer shall be subject to the previous approval of the Governor in Council.

5. It has been contended on behalf of the appellant that the appointing authority in the case of Income Tax Officers is not the Commissioner of Income Tax, but either the Governor-General in Council or the Governor in Council and that therefore the Commissioner is a person subordinate to the appointing authority (within the meaning of Section 96-B, Government of India Act). We are not able to accede to this contention. The language of Section 5, Income Tax Act as well as the language of the Devolution Rules is consistent only with the view that the Commissioner is the appointing authority, though, as already indicated, his powers in that connexion may be interfered with by higher authority on various grounds. As regards dismissal, there is no specific section or rule providing for dismissal, but as we have already observed, the rule which gives a right of appeal against orders of dismissal formerly to the Governor in Council and now to the Governor-General in Council proceeds on the assumption that the dismissal of an Income Tax Officer is to be by the Commissioner of Income Tax. Both the grounds urged in support of the appeal accordingly fail and the appeal must be dismissed with costs. The court-fee payable on the memorandum of appeal shall be paid out of the estate of the deceased appellant if any, in the hands of the next friend.

