
(1946) 01 MAD CK 0025
In the Madras High Court

The Governor-General in Council

APPELLANT

Vs

T.M. Krishnaswami Pillai

RESPONDENT

Date of Decision : 29-01-1946

Acts Referred:

Citation : AIR 1946 Mad 366 : (1947) ILR (Mad) 36 : (1946) 1 MLJ 267

Hon'ble Judges : Alfred Henry Lionel Leach, C.J

Bench : Division Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The appellant is the Governor-General in Council. The appeal arises out of a suit filed by the respondent

in the Court of the Subordinate Judge of Kumbakonam. He was the chief signaller in the Head Post Office at Kumbakonam. By an order dated

the 4th April, 1941, which was confirmed on appeal by the Postmaster-General, Madras, the respondent was dismissed from Government service.

He filed the suit for a declaration that the order of dismissal was "" illegal, void and inoperative"" and for other reliefs. The Subordinate Judge granted

the declaration asked for, but refused further relief. The appellant says that the Subordinate Judge erred in granting the respondent a declaration

and in rejecting a plea advanced by the plaintiff that the suit was not maintainable because the provisions of Section 80 of the CPC had not been complied with.

2. In or about the month of October, 1939, the respondent was suspected of having misappropriated monies which had come into his hands in the

course of his employment and consequently was suspended by the Superintendent of Post Offices, Tanjore division, who reported the matter to

the police. The result was that the police prosecuted the respondent for criminal

breach of trust. After a lengthy hearing the respondent was acquitted by the Magistrate on the 9th September, 1940. The Post Office authorities were not satisfied with the Magistrate's findings and decided to proceed against the respondent departmentally.. By an order, dated the 1st March, 1941, the Superintendent framed five charges, against him.

It is unnecessary to set them out in detail. It is sufficient to state that they were all charges of dereliction of duty, including a charge of having

collected money by the issue of bogus receipts. The respondent was called upon to explain the charges within a week of the receipt of the

memorandum served upon him and to show cause (1) why a loss to Government of Rs. 900 should not be recovered from him; and (2) why he

should not be dismissed from service. He was informed that a suitable opportunity would be afforded to him if he wished to be heard in person.

3. On the 5th March, 1941, the respondent wrote to the Superintendent acknowledging receipt of the memorandum of charges and asking to be

allowed one month's time to offer his defence. The request for further time was based on the assertion that he required the production of

documents filed in the proceedings before the Magistrate. The request was granted. In the letter dated the 7th March, 1941, the Superintendent

informed him that he should submit his explanation by the 1st April. On the 23rd March, 1941, the respondent wrote to the Superintendent as

follows:

With reference to your memo of charge No. F-5/13 of 1st March, 1941, I humbly beg to submit that the charges thereon have been elaborately

dealt with by the Sub-Divisional Magistrate, Kumba-konam, before whom I stood the trial by a Court of Law for the same charges. I was found

not guilty of the offence charged, as you are aware of. I have at this stage nothing further to submit to you in further proof of my innocence.

4. On the 24th March, the Superintendent wrote to the respondent reminding him that the time for submitting his explanation expired on the 31st

March and that he should submit it so as to reach the Superintendent's office not later than the 1st April, 1941. He was also informed that no

further extension of time would be granted to him "" on any account.

5. The respondent ignored this letter and consequently the Superintendent embarked upon the inquiry. In a report dated the 4th April, 1941, he

held that all the charges had been proved. He passed an order directing that the respondent be dismissed from the service with effect from the 1st

April, 1941 and that he should pay Rs. 600, part of the loss which the Government had suffered. The respondent had the right of appeal to the

Postmaster-General and he exercised it: in a letter addressed to the Postmaster-General on the 21st May, 1941. In para-graph 8 of the letter he

said:

The mere fact that I did not choose to give a written explanation for the charges and that I did not avail myself of the opportunity given for a

personal hearing cannot be taken as grounds for regarding the charges as proved.

6. This statement is of importance as the basis of the respondent's suit is that he was not given an opportunity of a personal hearing.

7. The Postmaster-General held that the first charge, which was a comparatively minor one, had not been substantiated, but he held that the other

charges had been proved and consequently he confirmed the order of dismissal. He reduced, however, the amount which the respondent was

ordered to pay to Government from Rs. 600 to Rs. 200. The respondent addressed the Director-General of Posts and Telegraphs with a view to

his re-instatement, but no action was taken as the decision of the Postmaster-General was final.

8. On the 22nd October, 1942, the respondent gave notice of suit u/s 80 of the Civil Procedure Code. It was addressed to (1) The Chief

Secretary to the Central Government; (2) The Political Secretary to the Central Government; (3) The Chief Secretary to the Provincial

Government; (4) The Political Secretary to the Provincial Government; (5) The Collector of Tanjore; (6) The Postmaster-General, Madras; and

(7) The Director-General of Posts and Telegraphs. It called upon them to take notice that a suit would be instituted against the Secretary of State

in the Subordinate Judge's Court, Kumbakonam, if the reliefs claimed by him were not granted within two months. For the institution of a suit

against the Secretary of State the notice complied with the requirements of Section 80 and on the 15th April, 1943, a suit against the Secretary of

State for India represented by the Collector of Tanjore was filed. On the 30th August, 1943, the Government Pleader disputed the maintainability

of the suit as framed, because, as the result of the amendment of Sections 79 and 80 of the Code of Civil Procedure, following the passing of the

Government of India Act, 1935, the Governor-General in Council and not the Secretary of State was the proper defendant. Thereupon the

respondent, filed an application asking to be allowed to amend the plaint by substituting the Governor-General in Council for the Secretary of

State. The application was granted by an order dated the 30th September, 1943. The respondent did not serve a fresh notice u/s 80 and relied on

the notice which he had given on the 22nd October, 1942. The Subordinate Judge held that this was sufficient.

9. Sub-section (3) of Section 240 of the Government of India Act, 1935, states that no person who is in the service of or holds a civil post under

the Crown in India shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action

proposed to be taken with regard to him. In his plaint the respondent averred that no reasonable opportunity had been given to him of being

personally heard. This plea was accepted by the Subordinate Judge and on this basis he granted the declaration asked for in the plaint. The other

reliefs claimed by the respondent were a decree for the amount of his salary from the date of his dismissal or for damages for wrongful dismissal

and for the recovery of the amount of his security deposit which was Rs. 200. The Subordinate Judge held that the respondent was not entitled to

a decree in respect of his salary nor was he entitled to damages for wrongful dismissal but he was of the opinion that he was entitled to the return of

the security deposit if he happened to be acquitted of charges framed in a fresh departmental inquiry.

10. In *Suraj Narain Anand v. The North-West Frontier Province* (1942) 1 M.L.J.77 : (1941) F.C.R.37 : (1945) F.C.R. 103 the Federal Court,

held that a suit for a declaration that a dismissal is void and inoperative lies when the dismissal is under Sub-section (2) of Section 240 of the

Government of India Act. That sub-section states that no civil servant shall be dismissed from the service of His Majesty by any authority

subordinate to that by which he was appointed. In *the Secretary of State for India v. I.M. Lall* (1945) 2 M.L.J. 270 : (1945) F.L.J. 129 : R.

(1937) Mad. 532 (P.C.) the Federal Court held that such a declaration cannot be given when the action is brought under Sub-section (3). In that

case the proper remedy is by way of a suit for damages for wrongful dismissal.

11. In Venkat Rao v. Secretary of State for India in Council (1937) 1 M.L.J. 529 : L.R. 64 IndAp 55 : ILR (1942) Lah. 692 : 4 F.L.J. 22 (F.C.)

the Privy Council held that the dismissal of a civil servant in utter disregard of the procedure prescribed by the rules will not give a right of action

for wrongful dismissal because a civil servant holds office during His Majesty's pleasure. Sub-section (1) of Section 240 of the Government of

India Act, 1935, declares that civil servants hold office during His Majesty's pleasure; but in Secretary of State for India v. I.M. Lall (1945) 2

M.L.J. 270 : (1945) F.L.J. 129 : ILR (1937) Mad. 532 (P.C.) the Federal Court held that the decision in Venkat Rao v. Secretary of State for

India in Council³, no longer applies when the grievance falls under Sub-section (3) of Section 240 of the Constitution Act because the sub-section

imposes a statutory obligation to be carried out before dismissal is effected. The judgment of the Federal Court in the Secretary of State for India

v. I.M. Lall (1945) 2 M.L.J. 270 : (1945) F.L.J. 129 : ILR (1937) Mad. 532 (P.C.) had not been delivered when the Subordinate Judge gave his

judgment in the present action, but the Federal Court's judgment is binding on us and consequently we must hold that the only relief which the

Court can grant, if satisfied with the plaintiff's case, is a decree for damages for wrongful dismissal.

12. We do not, however, accept the finding of the Subordinate Judge that a reasonable opportunity was not given to the respondent of being

heard. The memorandum of charges which was served on the respondent on the 3rd March, 1941, informed him in the plainest possible language

that he would be given a suitable opportunity of being heard if he wished to be heard. At no stage did he indicate even an intention of being present

at the inquiry. His letter of the 23rd March, 1941, in which he referred to his acquittal by the Magistrate indicates that he was content to rely on the

proceedings in the Magistrate's Court. The statement which we have quoted from paragraph 8 of the respondent's letter to the Postmaster-

General appealing from the Superintendent's order is in reality an admission that he deliberately refrained from availing himself of the opportunity of

being heard. In the course of his evidence the respondent said that if this statement implied that he had been given an opportunity of making a

written explanation and of a personal hearing, it did not correctly represent what he had mentioned to the person who prepared the appeal for him,

because it had always been his contention that no such opportunity had been given to him. This statement was made in cross-examination on the

26th June, 1944, but in further cross-examination on the 19th July he stated that his appeal to the Postmaster-General was prepared on his

instructions and that he signed it after perusing the contents. These statements are contradictory.

13. We have no doubt that the respondent did not want a personal hearing and was content to rest his case on the Magistrate's decision in the

criminal case. He was given full opportunity of showing cause against the action proposed to be taken with regard to him and of having a personal

hearing. The statutory obligation which Section 240(3) imposed upon the department had been fulfilled and consequently there was no cause of

action.

14. We consider that the appellant's objection to the notice u/s 80 of the CPC must also prevail. In *Bhagchand Dagadusa v. Secretary of State for*

India in Council (1927) 53 M.L.J. 81 : L.R. 54 IndAp 338 : ILR 51 Bom. 725 (P.C.) the Privy Council held that Section 80 is express and

explicit, it admits of no implications or exceptions and it imposes a statutory and unqualified obligation upon the Court. The section requires the

intending plaintiff to state inter alia the relief which he claims. As we have indicated, the notice which the respondent served stated that the suit

would be instituted against the Secretary of State for relief against him. There is no reference to the Governor-General in Council in the letter and

therefore it cannot be read as claiming relief against the Governor-General in Council. The fact that the officials on whom the notice is actually to be

served are the same makes no difference. Here the Court can only have regard to what is stated in the notice.

15. For these reasons the appeal is allowed and the suit is dismissed with costs There and below. As it was filed in forma pauperis the respondent

must pay to Government the court-fee due on the plaint.

16. The learned Counsel has asked for a certificate u/s 205 of the Government of India Act, 1935 and one will issue.