1967 *Present :* **Sirimane, J., and Siva Supramaniam, J.**

THE ATTORNEY-GENERAL, Appellant, *and* M. CHANMUGAM, Respondent

S. C. 182 of 1965—D. C. Colombo, 1209/Z

*Commission of Inquiry—Procedure for proceedings before such Commission—Natural justice—Features thereof—Commissions of Inquiry Act (Cap. 393), s. 7 (d)—Action to declare null and void findings of Commission—Jurisdiction of District Court—*Certiorari*—Courts Ordinance (Cap. 6), s. 7—Civil Procedure Code, s. 217G.*

Naval Officer—Suit by him against Crown for salary and allowances—Non-liability of Crown—Navy Pay Code—Navy Act (Cap. 359), ss. 10, 161—Regulation 43.

Plaintiff, who was a naval officer, had been found by a Commission of Inquiry to have participated in smuggling liquor. His commission was consequently withdrawn by the Governor-General and he was informed that he would not be entitled to any pension or gratuity under the "Navy Pay Code", which consisted of certain Regulations made under section 161 of the Navy Act. In the present action he sued the Attorney-General, as representing the Crown, and prayed for a declaration that the findings of the Commission of Inquiry were null and void and that he was entitled to certain emoluments. It was submitted on his behalf that the findings of the Commission of Inquiry were null and void because the Commission had violated the principles of natural justice by not giving the plaintiff a fair and impartial hearing. It was complained that the Commissioner should have called the plaintiff *after* the other witnesses and not before.

Held, (i) that a Commission appointed under the Commissions of Inquiry Act is master of its own procedure, and as long as the procedure adopted by it does not offend against one's sense of justice and fair play, it cannot be said that there has been a violation of the principles of natural justice. Nor is the Commission bound to adhere strictly to the provisions of the Evidence Ordinance.

(ii) that an officer in the Royal Ceylon Navy has no legal right to make a claim against the Crown for salary, allowances, pension or gratuity.

Quaere, whether a District Court has jurisdiction to declare null and void, on any ground, the findings of a Commission of Inquiry.

APPEAL from judgment of the District Court, Colombo.

H. L. de Silva, Crown Counsel, for the Defendant-Appellant.

H. W. Jayewardene, Q.C., with *L. C. Seneviratne* and *Ben Eliyatamby*, for the Plaintiff-Respondent.

Cur. adv. vult.

December 21, 1967. SIRIMANE, J.—

The plaintiff was a commissioned officer in the Royal Ceylon Navy, and at the times material to this action held the rank of First Lieutenant on board the ship H. M. Cy. S. Mahasena. This ship and another sailed on a far Eastern cruise in August, 1960, and returned to Colombo in October that year. There was a widespread belief that officers on these ships had brought into the island a large quantity of liquor without payment of duty, and after an inquiry by the Criminal Investigations Department, His Excellency the Governor-General acting under the Commissions of Inquiry Act (Chapter 393) issued, in August, 1961, a Commission to Mr. K. D. de Silva, a retired Judge of this Court to inquire and report whether any naval officer on these ships had violated the provisions of the Exchange Control Act or the Customs Ordinance.

The findings of the Commissioner in his report, in April 1963, were against certain officers including the plaintiff who was found to have participated in smuggling liquor into the island.

The plaintiff received his emoluments in accordance with regulations made under Section 161 of the Navy Act, Chapter 358, referred to as "The Navy Pay Code".

When the Commission was sitting (i.e. on 30.3.62) this Code was amended so that an officer suspended from his office would receive only half of the total emoluments payable to him during the period of his suspension, and would not be paid the amount withheld from him if he was found, by the commission, to have committed any act which amounted to an offence naval or civil.

The plaintiff was suspended on 30.3.62. His commission was withdrawn by the Governor-General on 12.6.63, and on 28.6.63 he was informed that he would not be entitled to any pension or gratuity.

In this action the plaintiff sued the Attorney-General, as representing the Crown, and prayed for a declaration that the findings of the Commission are null and void and that he is entitled to his full emoluments during the period of his suspension and also pension or gratuity in sums of Rs. 7,484/23 and Rs. 14,875 respectively.

The learned District Judge entered judgment in his favour as prayed for and the Attorney-General has appealed. The learned Crown Counsel submitted that the District Judge's finding, that the Commissioner had acted contrary to the principles of natural justice was wrong, that the Navy Pay Code and the general principles of law applicable to the Crown and the Armed Forces did not permit the plaintiff to make a claim for pay and pension, and that in any event the District Court had no jurisdiction to grant a decree declaring the findings of the Commission null and void.

It is necessary to understand the exact nature and scope of the plaintiff's claim ; and this was explained by learned Counsel who appeared for him in appeal. His position was that the Commissioner had violated the principles of natural justice and *thereby* deprived the plaintiff of his right to a fair and impartial hearing to which he was entitled. *For that reason* (so it was submitted) the plaintiff was entitled to a declaration that the findings against him were null and void.

The plaintiff's claim for those emoluments which were withheld from his suspension is almost inextricably interwoven with the allegation that the Commissioner's findings against him are tainted,—for,—if they are not, it is not disputed that the deductions had been properly made. The plaintiff's claim for a pension or gratuity was not supported in appeal for reasons which will presently appear.

So that, *even assuming that the District Court has jurisdiction* to grant a declaratory decree in the terms prayed for, the plaintiff's claim is founded entirely on the allegation that there has been a violation of the principles of natural justice in the conduct of the inquiry held by the Commissioner.

I shall, therefore, examine this allegation first, because it forms the basis of the plaintiff's claim. The document D2 shows that the Commissioner's request published in the newspapers, for written representations, met with little response. He had before him the statements made by various persons to the Criminal Investigations Department. These statements contained some incriminating evidence against 30 officers of whom the plaintiff was one. They were summoned as persons concerned in the inquiry. The terms of the Commission were explained to them. The Commissioner also had before him some documentary evidence which showed that a fairly large quantity of liquor and cigarettes had been issued to the plaintiff.

The plaintiff was then invited to give evidence :—he protested—but did so. He was represented by Counsel at the time. He was always given the right to appear by his Counsel. He was afforded every opportunity of cross-examining every witness called by the Crown Counsel who had assisted the Commissioner at the inquiry. It is incorrect to say (as alleged in the plaint) that the Commissioner refused to permit cross-examination of witnesses. His refusal was of an application for the *tender* of witnesses *not called*, for cross-examination. Nor was there any refusal to permit the plaintiff or any of the other officers to call witnesses. Here again it was an application made to the Commissioner that *he himself* should call witnesses (whom he apparently considered to be unnecessary) ; that was refused ;—and that application was made not by the plaintiff but by a Counsel appearing for another officer. The Commissioner was always prepared to hear any evidence which the plaintiff or any other officer wished to place before him. At the end of the evidence the Commissioner had explained to the officers concerned (including the plaintiff) the points in the evidence against them, and afforded

them every opportunity of giving evidence themselves or calling any witnesses in order to meet those points. The plaintiff who had summoned two witnesses chose not to call them or give any further evidence. The complaint now made is, that the Commissioner should have called the plaintiff *after* the other witnesses and not before. The primary concern of the Commission was to ascertain the facts. It is not incumbent on a Commissioner appointed for this purpose to follow a procedure appropriate to a Criminal Court. No charges need be framed and there can be no legal objection to the plaintiff being called as a witness at an early stage, if the plaintiff was made aware of the allegations made against him and given an opportunity of meeting them.

A Commission such as this is master of its own procedure, and as long as the procedure adopted by it does not offend against one's sense of justice and fair play, it cannot be said that there has been a violation of the principles of natural justice.

The next point urged in support of this contention was that a statement made to the police by one Lieutenant Brian Perera had been improperly used. He was one of the officers " concerned " in this inquiry, and had made a statement in the course of the investigations by the police, parts of which were unfavourable to the plaintiff. Brian Perera was called by the Commissioner to give evidence, but refused to do so. The statement was then proved by calling the police officer who recorded it, and the plaintiff was furnished with a copy of those parts of the statement which affected him. It was submitted that the use of the statement without the evidence of Brian Perera himself was improper. As stated earlier, Brian Perera was, in fact, called by the Commissioner but refused to testify. The statement would, of course, have been inadmissible in a Court of law under the provisions of the Evidence Ordinance. But, a fact finding Commission is not bound to adhere strictly to the provisions of the Evidence Ordinance. In fact, Section 7 (*d*) of the Commissions of Inquiry Act, Chapter 393, provides that a Commission appointed under the Act shall have power—

> " (*d*) Notwithstanding any of the provisions of the Evidence Ordinance to admit any evidence, whether written or oral, which might be inadmissible in civil or criminal proceedings ; "

The learned District Judge appears to have attached too much importance to a remark made by the Commissioner in the course of a discussion with Counsel that the principles of natural justice affect a Court of Justice and not a Court of inquiry,—and then asked the question perhaps rhetorically, " What constitutes natural justice ? ". But despite these remarks, an examination of the facts show that the Commissioner has acted fairly and impartially according to the rules of reason and justice. In *Ridge v. Baldwin* [1] Lord Hodson referred (at page 114)

[1] (1963) 2 *A. E. R. 66.*

to the three features of natural justice which stand out—(1) the right to be heard by an unbiassed tribunal, (2) the right to have notice of charges of misconduct, (3) the right to be heard in answer to those charges.

None of these rights were denied to the plaintiff at this inquiry.

The plaintiff's claim for a declaration that the findings of the Commission are null and void (assuming again that the District Court has power to grant it) must fail. Consequently, his claim for those emoluments withheld from him during the period of his suspension must also fail.

The next ground urged for the appellant constitutes a further bar to that claim, viz., that an officer in the Royal Ceylon Navy has no legal right to make a claim for salary and allowances against the Crown.

As stated earlier, payments to Naval Officers are granted in accordance with regulations made under section 161 of the Navy Act. These regulations provide a *scale of salary and allowances* payable to those holding different ranks in the Navy. There is no legal right conferred on those to whom the payments may be made. It is true that regulation 43, for example, provides that " the pay and allowances to which an officer or seaman is entitled shall be issued to him monthly ", but this regulation is really directed to specify the period of time at which payments should be made. The words are, in my opinion, insufficient to create a legal obligation to pay. One notices here the presence of section 24 in the Army Act (Chapter 357) and in the Air Force Act (Chapter 359). Those sections enact that officers of those Forces " shall be entitled to such pay and allowances and to be quartered in such manner as may be prescribed ". I must not be understood to say that soldiers and airmen are entitled to make claims for pay and allowances against the Crown, I only wish to make it clear that an argument which may be available to them cannot be advanced by those to whom the Navy Act applies. I do not think that the latter are in any better position than Naval Officers in England who receive their pay and allowances on the authority of a Royal Warrant. There are a number of cases in England where it has been held that no engagement made by the Crown with any of its military or naval officers in respect of services, can be enforced in any Court of Law (see *Nitchell v. The Queen*[1] and *Leaman v. The King*[2]). Nor indeed do civil officers employed by the Crown enjoy such a right (see *Nixon v. The Attorney-General*[3] and the local case of *The Attorney-General v. Kodeswaran*[4]). Anson (Law and Custom of the Constitution, 4th Edition, Volume II, Part II) dealing with claims against the Crown says at page 335:

" A further limitation of the liability of the Crown, and a vital one in practice, is the fact that no servant of the Crown, military, naval, air or civil, has any rights enforceable against the Crown in respect of a

[1] *(1896) 1 Q. B. D. 121.*
[2] *(1920) 3 K. B. D. 663.*
[3] *(1930) 1 Chancery Division 566.*
[4] *(1957) 70 N. L. R. 121.*

contract of service, e.g., as regards salary or pension. It is an essential character of all Crown Service that, apart from statutory provision, the Crown has an absolute right to dispense with any officer's services and that it lies with it to pay its servants at its pleasure."

Section 10 of the Navy act provides that "Every commissioned officer shall hold his appointment during the Governor-General's pleasure". It is an incidence of holding office at pleasure that the holder has no legally enforceable right against his employer.

The plaintiff's claim against the Crown for a pension or gratuity must also fail on this same ground. Counsel for the respondent, however, said that he was not supporting that claim on the terms of the regulations themselves which have been produced in the case marked D 44. According to those regulations an officer may be paid a pension or a gratuity if he either retires or is invalided. Since neither of these conditions apply to the plaintiff this claim was not supported.

In view of the findings above it is unnecessary to decide the question of jurisdiction. Learned Crown Counsel argued, with much force, that the jurisdiction of the District Court was statutory and conferred on it by the Courts Ordinance (Chapter 6),—that it was an inferior Court (the only superior Court being the Supreme Court under section 7 of the Courts Ordinance)—and that a District Court had no supervisory jurisdiction. He contended that a District Court had no jurisdiction to declare null and void the findings of a Commission, on any ground whatsoever. He conceded that the plaintiff may have applied to this Court to quash the proceedings by way of *Certiorari* if there had been a violation of the principles of natural justice, but he strongly argued against a District Court granting a declaratory decree. In England it has been held that *Certiorari* does not exclude the declaratory action (see *Cooper v. Wilson* [1]); but there, it is the High Court which has jurisdiction to grant *both* remedies. In regard to the scope of the declaratory action Lord Denning said in *Barnard v. National Dock Labour Board* [2]:

> "I know of no limit to the power of the Court to grant a declaration except such limit as it may in its discretion impose on itself, and the Court should not, I think, tie its hands in this matter of statutory tribunals."

Here, the Supreme Court does not exercise original jurisdiction in granting declaratory decrees which are granted only by the District Court. Section 217 of the Civil Procedure Code which classifies decrees for purposes of execution recognizes (section 217G) decrees which declare a right or status.

[1] *(1937) 2 A. E. R. 726.* [2] *(1953) 1 A. E. R. 1113 at 1119.*

What are the limits within which a District Court in Ceylon can grant such a decree ?

There are certain decisions of this Court which favour the view that the jurisdiction of the District Court in this matter should not be restricted.

In *Attorney-General v. Sabaratnam*[1] Gratiaen J. (with Swan J. agreeing) affirmed a declaratory decree granted by a District Court to an overseer in the Public Works Department, that no debt was due from him to the Crown (he complained that the Government was withholding his pension on the ground that an overpayment had been made to him). In *Ladamuttupillai v. the Attorney-General*[2], where the legality of the decision of a Land Commissioner to acquire a land was questioned, Basnayake, C.J. (with Pulle, J. agreeing) was of the view that a declaratory decree should be granted and that *certiorari* did not exclude a regular action when both remedies are available.

In *Thiagarajah v. Karthigesu*[3], H. N. G. Fernando, C.J. (who was associated with G. P. A. Silva, J.) took the view that jurisdiction had been conferred on the District Courts to grant declaratory decrees, before the Courts Ordinance came into operation, and said, " .....in conferring that jurisdiction, the Legislature of Ceylon intended to adopt the English law contained in Order XXV, Rule 5 of the English Rules of the Supreme Court, 1883, to the following effect: 'No action or proceeding shall be open to objection, on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed or not.' " It is under this Order that the English Courts grant declaratory decrees. It was submitted for the respondent that the District Courts in Ceylon had the same jurisdiction as the High Court in England to grant declaratory decrees. Learned Crown Counsel, however, sought to canvass the finding in *Thiagarajah's case* in so far as it related to " jurisdiction " of the District Courts.

I do not propose to examine this question and express an opinion as it is unnecessary to do so in this case, because the appellant must succeed on the other two grounds discussed above.

The appeal is allowed and the plaintiff's action dismissed with costs in both Courts.

SIVA SUPRAMANIAM, J.—I agree.

Appeal allowed.

[1] *(1955) 57 N. L. R. 481.*

[2] *(1957) 59 N. L. R. 313.*

[3] *(1966) 69 N. L. R. 73.*