1958 *Present :* **Basnayake, C.J., and Pulle, J.**

SILVA, Appellant, *and* THE ATTORNEY-GENERAL, Respondent

S. C. 785—D. C. Colombo, 39,746/M

Public Service—Person holding office under the Crown—Liability to dismissal by Public Service Commission—Power of Public Service Commission to delegate its powers—Effect of such delegation—Revocation of delegation—Interpretation Ordinance, s. 15—Wrongful dismissal of public servant—Right to obtain redress from the Courts—Maintainability of action for declaration of status—Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, ss. 57, 58, 60, 61.

The implied term of service of a person holding office under the Crown that his tenure of office is at the pleasure of the Crown can be impaired by statute or by express agreement.

Rules as to procedure concerning dismissal, notice, term of office and the like are legally binding if they have the force of law or are expressly incorporated in the contract of service.

It is open to a servant of the Crown, who has been unlawfully dismissed from the Public Service by the Public Service Commission, to seek to obtain from a competent Court a declaration (*a*) that he has not been dismissed from the Public Service according to law, and (*b*) that notwithstanding the purported dismissal of him by the Public Service Commission, he is still a public servant and entitled to his emoluments and pension rights as a servant under the Crown.

By section 61 of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947 :—

> " The Public Service may, by Order published in the *Government Gazette*, delegate to any public officer, subject to such conditions as may be specified in the Order, any of the powers (of appointment, transfer, dismissal, &c. of public officers) vested in the Commission by subsection (1) of section 60. Any person dissatisfied with any decision made by any public officer under any power delegated as aforesaid may appeal therefrom to the Commission and the decision of the Commission on such appeal shall be final. "

Held, that where the Public Service Commission delegates its power to dismiss a public officer, the delegation denudes the Public Service Commission of the power delegated and such power cannot be exercised thereafter unless the delegation is formally revoked by a second Order published in the *Gazette* in accordance with the provisions of section 15 of the Interpretation Ordinance. Accordingly, where the power of dismissing a public officer is delegated to A but is exercised without any legal authority by a different person B, the Public Service Commission has no power to dismiss the public officer when he appeals to it from the unauthorised and illegal decision of B.

Held further, that a public officer to whom the powers of the Public Service Commission are delegated must exercise them himself and not redelegate the delegated power.

APPEAL from a judgment of the District Court, Colombo.

The plaintiff was a village cultivation officer in the Irrigation Department. He was working in the District of Anuradhapura under the supervision of the Government Agent. He was receiving a salary of

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Rs. 2,520 per annum. In October 1953 the Government Agent framed certain charges against him and subsequently directed the Office Assistant of the Anuradhapura Kachcheri to inquire into the charges. The inquiry was accordingly held and in February 1954 the Government Agent wrote a letter to the plaintiff dismissing him from the Public Service. The plaintiff thereupon appealed to the Public Service Commission on the ground that the Government Agent had no authority to dismiss him and that it was the Director of Irrigation alone who could do so. The decision of the Public Service Commission on the plaintiff's appeal was conveyed by the following letter dated August 27, 1954 :—

> "I am directed to inform you that the Public Service Commission has considered the charges against you and the evidence led in support of these charges and your defence. The Public Service Commission has decided that you should be dismissed from 27th February, 1954. Any salary withheld during the period of interdiction should be forfeited."

The plaintiff thereupon instituted the present action against the Attorney-General asking for a declaration (*a*) that he had not been dismissed from the Public Service according to law, and (*b*) that notwithstanding the purported dismissal of him by the Public Service Commission, he was still a public servant and entitled to his emoluments and pension rights as a servant under the Crown.

Admittedly (1) the Government Agent, Anuradhapura, was not the person to whom the Public Service Commission had delegated its power of dismissal in respect of officers of the Irrigation Department, (2) the order of the Government Agent dismissing the plaintiff was made without any legal authority in that behalf, and (3) the Director of Irrigation, to whom the powers of dismissal had been delegated, had made no order dismissing the plaintiff.

Walter Jayawardene, with *Felix Bhareti* and *Neville Wijeratne*, for Plaintiff-Appellant.

A. C. Alles, Deputy Solicitor-General, with *H. L. de Silva*, Crown Counsel, and *P. Nagueswaram*, Crown Counsel, for Defendant-Respondent.

Cur. adv. vult.

November 14, 1958. BASNAYAKE, C.J.—

This is an action against the Attorney-General by a servant of the Crown who has been dismissed from the Public Service by the Public Service Commission. He asks for a declaration—

(*a*) that he has not been dismissed from the Public Service according to law, and

(*b*) that notwithstanding the purported dismissal of him by the Public Service Commission, he is still a public servant and entitled to his emoluments and pension rights as a servant under the Crown.

The following facts are not in dispute. The plaintiff held an appointment in the public service in the capacity of a village cultivation officer in the Irrigation Department. At the time of his dismissal he received a salary of Rs. 2,520 per annum. From about 1st April 1951 the plaintiff worked in his capacity of a village cultivation officer in the District of Anuradhapura under the supervision of the Government Agent of the North-Central Province.

On or about 30th September 1953 the Government Agent interdicted the plaintiff from the discharge of his duties as a village cultivation officer, and on 1st October 1953 framed charges against him. On 9th December 1953 the Government Agent directed the Office Assistant of the Anuradhapura Kachcheri to inquire into the charges. The inquiry was accordingly held by the Office Assistant on 9th and 10th December 1953. On 27th February 1954 the Government Agent wrote the following letter to the plaintiff dismissing him from the Public Service :—

"With reference to the inquiry held on 9.12.53 and 10.12.53 on the charges framed against you in my letter No. I. C. of 1.10.53 and amended by my letter No. PA/RWS/61/HP of 21.11.53, the following is the verdict of the Inquiring Officer on the charges framed against you :—

Charge (*a*) Guilty.

,, (*b*) Technically guilty with a recommendation that it be condoned in view of the circumstances.

,, (*c*) Guilty.

,, (*d*) Guilty.

,, (*e*) Guilty.

2. You are dismissed from the Public Service with effect from the date of interdiction namely 30th September, 1953."

The plaintiff thereupon appealed to the Public Service Commission by his petition dated 27th April 1954 (P2). In that petition he took up the ground that the Government Agent had no authority either to interdict him or to dismiss him and that it was the Director of Irrigation alone who could do so. He submitted that the dismissal was null and void and asked that he be reinstated in the public service with effect from 30th September 1953.

The decision of the Public Service Commission on the plaintiff's appeal was conveyed by the following letter (P3) dated 27th August 1954 :—

"I am directed to inform you that the Public Service Commission has considered the charges against you and the evidence led in support of these charges and your defence. The Public Service Commission has decided that you should be dismissed from 27th February, 1954. Any salary withheld during the period of interdiction should be forfeited."

The defendant resists the plaintiff's action on a number of grounds. He maintains—

(*a*) that the dismissal by the Government Agent was lawful,

(*b*) that the dismissal by the Public Service Commission was lawful,

(*c*) that the plaintiff had no cause of action to sue him,

(*d*) that the Court has no jurisdiction to grant the declarations sought by the plaintiff,

(*e*) that the Court has no jurisdiction to inquire into or hear or determine the legality or the propriety of the acts or orders or decisions of the Government Agent or Office Assistant or the Public Service Commission,

(*f*) that the plaintiff cannot maintain this action because he held office at the pleasure of the Crown.

At the trial no oral evidence was produced by either side. The documents P1, P2 and P3 were tendered in evidence by the plaintiff and the documents D1 and D2 — the *Gazettes* of 5th February 1948 and 4th October 1949—by the defendant.

The following issues were agreed on by the parties :—

1. Were the charges framed against the plaintiff by the Government Agent N. C. P. on or about 1.10.53 framed without authority and were they for that reason without effect in law ?

2. Were the dismissal of the plaintiff by the Government Agent N.C.P. made without authority, and for that reason without effect in law ?

3. Did the Public Service Commission in dismissing the plaintiff on or about 27.8.54 act—

(*a*) in appeal upon the inquiry and order of dismissal of the G. A. ?

or (*b*) by virtue of its original power ?

4. If issues 1, 2 and 3 are answered in favour of the plaintiff, is the decision of the Public Service Commission to dismiss the plaintiff null and void ?

5. If issue 3 is answered in favour of the Crown is the order of dismissal bad in law for the reason that no charges were framed against the plaintiff by the Public Service Commission and that no opportunity was given to the plaintiff to be heard by the Public Service Commission ?

6. Does the plaint disclose any cause of action against the Crown ?

7. Is it competent to the Court to entertain an action for a declaration contained in prayer (*a*) or in (*b*) of the plaint ?

8. If issue 7 is answered in favour of the plaintiff should the Court in the exercise of its discretion grant either or both of the declarations referred to in issue 7 ?

The learned District Judge dismissed the plaintiff's action holding that—

(*a*) the charges framed against the plaintiff by the Government Agent were framed without authority and were for that reason without effect in law,

(*b*) the dismissal of the plaintiff by the Government Agent was made without authority, and for that reason was without effect in law,

(*c*) the dismissal of the plaintiff by the Public Service Commission should be regarded as having been made under section 60 (1) of the Ceylon (Constitution) Order in Council 1946,

(*d*) the decision of the Public Service Commission to dismiss the plaintiff was not null and void,

(*e*) the order of dismissal was not bad in law for the reason that no charges were framed against the plaintiff by the Public Service Commission and that no opportunity was given to the plaintiff to be heard by the Public Service Commission,

(*f*) the plaint does not disclose a cause of action against the Crown,

(*g*) in the circumstances of this case it is not competent to the Court to entertain an action for a declaration contained in prayer (*a*) or (*b*) of the plaint.

This is a convenient point at which to examine the provisions of our law governing the appointment of servants of the executive departments of the Government. By section 60 of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947 (hereinafter referred to as the Order in Council), the appointment, transfer, dismissal and disciplinary control of public officers are vested in the Public Service Commission constituted under section 58. Section 61 of the Order in Council empowers the Commission by Order published in the *Gazette* to delegate to any public officer, subject to such conditions as may be specified in the Order, any of the powers vested in the Public Service Commission by section 60. That section also confers on any person dissatisfied with any decision made by any public officer under any power delegated by the Commission a right of appeal to it. In the instant case admittedly the Government Agent, Anuradhapura, was not the person to whom the Commission had delegated its power of dismissal in respect of the officers of the Irrigation Department to which the accused belonged. The delegation in respect of them was to the Director of Irrigation. Admittedly the order of the Government Agent dismissing the appellant was made without any legal authority in that behalf and is therefore of no effect in law. It is also admitted that the Director of Irrigation, the officer to whom the power had been delegated, has made no order dismissing the appellant.

The order of dismissal against which the appellant complains is the order made by the Public Service Commission when he appealed to it from the unauthorised and illegal decision of the Government Agent. In that appeal he urged that the Government Agent had no power to dismiss him

and that the order of dismissal was null and void and invited the Public Service Commission to set aside the order and to reinstate him with effect from 30th September 1953. The order made on 27th August 1954 on this appeal was as follows :—

> ". . . . the Public Service Commission has considered the charges against you and the evidence led in support of these charges and your defence. The Public Service Commission has decided that you should be dismissed from 27th February 1954. Any salary withheld during the period of interdiction should be forfeited."

The Public Service Commission made this order while the delegation of its power in respect of the appellant to the Director of Irrigation was still in force. The Public Service Commission having delegated under section 61 its power to dismiss had no power in law while the delegation was in force to dismiss the appellant. When a delegation is made under section 61 of the power of appointment, dismissal and disciplinary control of public officers to any public officer the Public Service Commission by operation of that section automatically becomes an appellate body whose decision in appeal is declared to be final. It is unthinkable that a tribunal or body should in the same matter be both an original and an appellate tribunal or body. It is clear from the enactment that when the Order in Council gave the Public Service Commission power to delegate its functions and constituted it the body to which appeals from the person exercising the delegated authority may be taken it did not intend that the appellate body should, by usurping the functions of the delegate, be able to deprive the public officer of the benefit of the right of appeal given to him by the Order in Council. It is idle to seek to define the word delegate apart from the context in which it occurs. In this context especially in view of the fact that an appeal is allowed to the delegating authority from the decision of the delegated authority delegation of its functions by the Public Service Commission to a public officer results in the substitution of the public officer for the Public Service Commission. The delegation denudes the Public Service Commission of the powers delegated and they cannot be exercised by the Public Service Commission without a formal revocation of the delegation and resumption of the powers delegated. As the Order in Council requires that the delegation should be by Order published in the Government *Gazette* the revocation of that Order should also be by Order published in the Government *Gazette*. *Huth v. Clarke*[1] was cited by learned counsel for the Crown in support of the general proposition that an authority empowered by a statute to delegate its functions may notwithstanding the delegation continue without revoking the delegation to exercise the functions which it has delegated. I do not think that that case lays down such a broad proposition. That it does not is evident from the following words in the judgment of Lord Coleridge : "Unless, therefore, it is controlled by statute, the delegating power can at any time resume its authority".

Whether the delegation denudes the delegating authority of its powers or not and whether the delegating authority may resume its powers

[1] *(1890) 25 L. R., Q. B. D. 391.*

and if so the time at which and the manner in which it may resume the delegated powers depend on the terms of the legislative instrument under the authority of which the delegation is made. In the case of *Blackpool Corporation v. Locker* [1] it was held that having regard to the provisions of the legislative instrument under which a delegation had been made it was not open to the delegating authority to exercise the delegated powers. Scott L.J. observed at page 377 :

> " In any area of local government, where the Minister had by his legislation transferred such powers to the local authority, he, for the time being, divested himself of those powers, and, out of the extremely wide executive powers, which the primary delegated legislation contained in reg. 51, para. 1, had conferred on him to be exercised at his discretion, retained only those powers, which in his subdelegated legislation he had expressly or impliedly reserved for himself. "

In the instant case, as stated above, the Public Service Commission was free to revoke its delegation by Order published in the Government *Gazette* by virtue of section 15 of the Interpretation Ordinance although the empowering section itself, as in the case of the English Statute referred to in the case of *Huth v. Clarke* (*supra*), does not confer a power to revoke a delegation once made. The expression delegated legislation which is familiar in the field of subsidiary legislation is apt to mislead one in the consideration of the topic of delegated powers. What is called delegated legislation is really not delegated legislation, for Parliament cannot and does not delegate its powers to anyone else. What is called the power of delegated legislation is the authority conferred by the Legislature on a statutory body to make subordinate laws on certain specified matters. In some cases these laws are given the effect of the statute itself, in others they are not. No analogy can therefore be drawn from the meaning that that expression has acquired in the field of law making. The order of the Public Service Commission dismissing the appellant is therefore of no effect in law as it had no power to make that order at the time it made it.

Before I leave this part of the judgment I wish to point out that a public officer to whom the powers of the Public Service Commission are delegated must exercise them himself and not redelegate the delegated power. *Delegata potestas non potest delegari* and *delegatus non potest delegare* are well established maxims. It would appear from the document P1 that the Government Agent when he made the unauthorised order of dismissal was unaware not only of the fact that he had no power to make the order dismissing the appellant but also of the fact that he was not free to redelegate any delegated powers to anyone. For, according to his letter to the appellant quoted above, that is what he purported to do.

What I have said above disposes of the above grounds (*a*) and (*b*) raised by the defendant. It is clear that the dismissal by the Government Agent was of no effect in law and that the dismissal by the Public Service Commission was also of no legal effect.

[1] *(1948) 1 K. B. 349.*

In regard to grounds (c), (d), and (e), it is sufficient to say that under our law it is open to a person to seek to obtain from a competent court a declaration such as the one sought by the appellant in this case. It has been so laid down in a number of decisions of this Court. It is sufficient to refer to the case of *Ladamuttu Pillai v. The Attorney-General* [1]. It is too late in the day to re-agitate the question of the power of the Courts to declare in a suitably framed action a right or status or the right of the subject to have access to the Courts for the purpose of obtaining such a judgment. Such actions for declaration are not unknown in other parts of the Commonwealth.

Even in the case of a Patent Office tenable during good behaviour it has been held in the case of *Grenville-Murray v. Earl of Clarendon* [2] that it was for the Courts and not the Crown to decide whether or not the office holder had been guilty of a breach of "good behaviour". Lord Romilly M. R. observed in that case—

> "Unquestionably if he (the plaintiff) had been appointed to an office by Act of Parliament or by patent from the Crown, which was to be held as long as he behaved himself properly, then I might have to go into the fact of whether the removal of the gentleman was justified—whether the acts proved to have been done by this gentleman were such as warranted his removal."

In regard to ground (f), the appellant does not contend that the Crown has no right to dismiss a public officer except for cause. His contention is that the authority who is empowered by law to exercise the power of dismissal has not dismissed him and that he is in law still a member of the public service. I have already held that this contention is sound and that the appellant is entitled to succeed. Even where the tenure of office of a public officer is declared to be a tenure subject to the pleasure of the Crown it has been held that statutory provisions or express terms of contract governing the tenure of office and the right to dismiss cannot be ignored but must be given their effect. Since the case of *Shenton v. Smith* [3] there has been no serious attempt to get back to the old theory that the right to dismiss at pleasure is a prerogative of the Crown. It is now settled that the right where it is not declared by statute is an implied term of the engagement. The basis of this implied term appears to be the interests of public policy or public good. The right to remove a public officer from office and the procedure for his removal must not be confused. The right to remove depends on the terms of the appointment. If it is subject to removal for cause, the cause for which the removal can be effected must exist. The right to remove at pleasure must be exercised by the person authorised by law to exercise that power and the procedure for removal where such procedure is prescribed by legislative instrument must be strictly observed. Similarly the right to remove for cause must, where the procedure is prescribed by legislative instrument, be exercised in strict accordance with the prescribed procedure. When the act of dismissal is challenged by appropriate proceedings in a court of law the

[1] *(1957) 59 N. L. R. 313.* [2] *(1869) L. R. 9 Eq. 11, 19.*
[3] *(1895) A. C. 229.*

Crown cannot succeed unless it is established that the removal is warranted by law and it has been done in accordance with the procedure prescribed by law. It is sufficient to refer in this connexion to the cases of *Gould v. Stuart* [1]; *Williamson v. The Commonwealth* [2]; *Lucy v. The Commonwealth* [3]; and *Rangachari v. Secretary of State for India in Council* [4].

In *Gould's* case the plaintiff who was a clerk in the Civil Service was dismissed by the Government without following the procedure prescribed in the Civil Service Act 1884. It was contended for the Crown that the Act did not create any exception to the rule that Civil Servants of the Crown held office only during pleasure and that the Act did not either expressly or by implication change the Civil Servant's tenure of office. It was further contended that final dismissal under the Act could co-exist with dismissal at pleasure and that an express authority to inflict the one did not imply that the other was abolished. These contentions were rejected by the Privy Council which held that provisions which were manifestly intended for the protection and benefit of the officer must be given their effect even though they are inconsistent with the term that the Crown may put an end to the contract of service at its pleasure.

In *Williamson's* case it was held that the power of dismissal under the Commonwealth Public Service Act 1902 must be exercised strictly and that an officer who had been dismissed without being first suspended as required by the Act had been wrongfully dismissed and damages were awarded to the officer. Higgins J. after examining the provisions of the Commonwealth Public Service Act, 1902, stated:

> "In short, if there be no suspension for the charges, the officer cannot be furnished with a copy of the charges 'on which he is suspended'; and unless he be furnished with such a copy, there is no power to appoint a Board of Inquiry; and if there be no valid Board of Inquiry, the power of the Governor-General to dismiss does not arise. It may be thought that the officer suffers no harm in not being suspended. I am not sure that he is not prejudiced, especially if—as the parties assume—a suspended officer is entitled to pay during suspension, in the event of his not being dismissed. But, prejudiced or not, suspension on the charges for which he is dismissed is made a condition precedent to dismissal. Powers of dismissal under this Act, like powers of expulsion under partnership and other agreements, must be exercised strictly as prescribed."

Lucy's case was an action for damages for wrongful dismissal by an officer of the Postal Department of South Australia. It was held by Knox C.J., and Isaacs, Higgins, and Starke JJ., that his dismissal was contrary to the Statute governing his employment and that he was entitled to damages, the measure of damages being the same as that in an action for wrongful dismissal. In the course of his judgment Starke J. observed:

> "The relation between the Crown and its officers is contractual in its nature. Service under the Crown involves, in the case of civil officers, a contract of service—peculiar in its conditions, no doubt, and

[1] *(1896) A. C. 575.*
[2] *(1907) 5 C. L. R. 174.*
[3] *(1923) 33 C. L. R. 229.*
[4] *(1937) A. I. R. (P. C.) 27.*

in many cases subject to statutory provisions and qualifications—but still a contract (*Gould v. Stuart* (*supra*)). And, if this be so, there is no difficulty in applying the general law in relation to servants who are wrongfully discharged from their service."

In *Rangachari's* case the plaintiff was dismissed contrary to the provision of a statute which reads—

"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."

The Privy Council held that the dismissal was bad. Lord Roche who delivered the judgment of the Board observed—

"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."

Learned counsel for the Crown placed great reliance on the case of *R. Venkata Rao v. Secretary of State for India* [1]. In my view it is of no avail to the Crown in the instant case. Venkata Rao sought to recover from the Secretary of State for India Rs. 15,000 as damages for wrongful dismissal. The Privy Council while refusing to order the Secretary of State to pay damages stated in no uncertain terms that the rules governing dismissal must be scrupulously observed. Although damages were refused the Board's criticism of the wrongful action of the Government was severe. It stated :

"They regard the terms of the section as containing a statutory and solemn assurance that the tenure of office, though at pleasure, will not be subject to capricious or arbitrary action, but will be regulated by rule. The provisions for appeal in the rules are made pursuant to the principle so laid down. It is obvious, therefore, that supreme care should be taken that this assurance should be carried out in the letter

[1] (*1937*) *A. C. 248.*

and in the spirit, and the very fact that government in the end is the supreme determining body makes it the more important both that the rules should be strictly adhered to and that the rights of appeal should be real rights involving consideration by another authority prepared to admit error, if error there be, and to make proper redress, if wrong has been done. Their Lordships cannot and do not doubt that these considerations are and will be ever borne in mind by the governments concerned and the fact that there happen to have arisen for their Lordships' consideration two cases where there has been a serious and complete failure to adhere to important and indeed fundamental rules, does not alter this opinion. In these individual cases mistakes of a serious kind have been made and wrongs have been done which call for redress."

Without a knowledge of the entire background of the Indian law against which the above decision was given I find great difficulty in reconciling the refusal to grant redress with the severe strictures passed on the Government. Under our law a person who has been so grievously wronged as Venkata Rao appears to have been can undoubtedly obtain redress from the Courts. In this respect our law seems to be more in accord with that of Australia than with that of England and India.

The above cases and others too numerous to cite here [1] including the case of *R. Venkata Rao v. Secretary of State for India* (*supra*) read with *Reilly v. The King* [2] lay down the following principles :—

(*a*) that the implied term of service of civil servants of the Crown that their tenure of office is at pleasure can be impaired only by statute or by express agreement ;

(*b*) that rules as to procedure on dismissal, notice, term of office and the like, have no legal effect unless they have the force of law or are expressly incorporated in the contract of service. Where they are expressly incorporated in the contract of service or have the force of law they prevail.

[1] (1) *Smyth v. Latham, (1833) 9 Bing. 692, 131 E. R. 773.*
(2) *De Dohse v. The Queen, (1886) 3 T. L. R. 114.*
(3) *Shenton v. Smith, (1895) A. C. 229.*
(4) *Dunn v. The Queen, (1896) 1 Q. B. 116.*
(5) *Young v. Adams, (1898) A. C. 469.*
(6) *Young v. Waller, (1898) A. C. 661.*
(7) *Re Hales, (1918) 34 T. L. R. 341 affd. 589.*
(8) *Denning v. Secretary of State for India in Council, (1920) 37 T. L. R. 138.*
(9) *Venkata Rao v. Secretary of State for India, (1937) A. C. 248.*
(10) *Lucas v. Lucas & High Commissioner for India, (1943) 2 A. E. R. 110.*
(11) *Rodwell v. Thomas, (1944) 1 K. B. 596.*
(12) *Terrell v. Secretary of State for Colonies (1953) 2 Q. B. 482.*
(13) *Inland Revenue Commissioners v. Hambrook, (1956) 1 All E. R. 807.*

[2] *(1934) A. C. 176 at 179.*

In this connexion it will not be out of place to quote here the words of Lord Atkin in *Reilly's* case :

> " Orde J.'s judgment in the Supreme Court seems to admit that the relation might be at any rate partly contractual ; but he holds that any such contract must be subject to the necessary term that the Crown could dismiss at pleasure. If so, there could have been no breach.
>
> " Their Lordships are not prepared to accede to this view of the contract, if contract there be. If the terms of the appointment definitely prescribe a term and expressly provide for a power to determine ' for cause ' it appears necessarily to follow that any implication of a power to dismiss at pleasure is excluded. "

That the Courts in England are now definitely getting away from the old view that the implied term of termination at pleasure in contracts of service under the Crown can only be impaired by statute or regulation having statutory force is evident from the following observations of Denning J. (now Lord Denning) in *Robertson v. Minister of Pensions* [1] :

> " But those cases must now all be read in the light of the judgment of Lord Atkin in *Reilly v. The King* (*supra*). The judgment shows that, in regard to contracts of service, the Crown is bound by its express promises as much as any subject. The cases where it has been held entitled to dismiss at pleasure are based on an implied term which cannot, of course, exist where there is an express term dealing with the matter."

In this country tenure of office during the pleasure of the Crown was till 1946 an implied term of the contract of service. In that year the following clause was introduced into the Ceylon (Constitution) Order in Council 1946 :

> " Save as otherwise provided in this Order, every person holding office under the Crown in respect of the Government of the Island shall hold office during His Majesty's pleasure". (s. 57).

Since then the condition that a public officer holds office during Her Majesty's pleasure is a matter of written law. The same paramount legislative instrument prescribes the conditions of tenure and provide for the appointment and dismissal of public officers. Like any other legislative instrument effect must be given to it as a whole and it is not permissible to ignore any part of it In the instant case the body authorised by law to dismiss the appellant has not done so. The provisions of the legislative instrument governing dismissal not having been followed the appellant has not been legally dismissed by the authority empowered in law to do so.

[1] *(1949) 1 K. B. 227 at 231.*

For the above reasons the appeal is allowed with costs both here and below and the appellant is declared entitled to the declaration he seeks.

PULLE, J.—I agree.

Appeal allowed.