

1968 Present : Abeyesundere, J., and Samerawickrame, J.

R. R. PILLAI, Appellant, and C. D. FONSEKA and another,
Respondents

S. C. 598/65—D. C. Vavuniya, 1869

Public officers—Ceylon (Constitution) Order in Council, 1946, s. 61—Order made by Public Service Commission on 7th October 1955—Dismissal of a public officer thereunder on the ground that his visa had expired—Invalidity—Action for a declaratory decree relating to illegality of the dismissal—Maintainability.

By an Order made by the Public Service Commission on 7th October, 1955, under section 61 of the Ceylon (Constitution) Order in Council, 1946, the Head of a Department was delegated the power to dismiss public officers of certain categories on the ground of misconduct. Purporting to act under that Order, the Director of Land Development terminated the services of the plaintiff-appellant on the ground that his visa had expired and that, therefore, he did not come under the category of persons who had a right of employment under the Government of Ceylon.

Held, that the plaintiff was dismissed, not on the ground of misconduct, but on the ground that his visa had expired. His dismissal was therefore void and inoperative.

Held further, that it is open to a public servant, who is aggrieved by the unlawful termination of his services, to institute an action seeking the relief of a declaration that the termination of his services was void and inoperative.

APPPEAL from a judgment of the District Court, Vavuniya.

C. Suntheralingam, for the Plaintiff-Appellant.

H. Deheragoda, Senior Crown Counsel, with *P. Naguleswaran*, Crown Counsel, for the Defendants-Respondents.

Cur. adv. vult.

March 8, 1968. ABEYESUNDERE, J.—

In this case the plaintiff sued the defendant for an alleged breach of contract of employment stating that the plaintiff's services were terminated by the defendant unlawfully and that such unlawful termination constituted a breach of contract of employment. The defendant in this case is the Director of Land Development. The Attorney-General intervened under section 463 of the Civil Procedure Code for the purpose of defending the Director and was substituted as a party defendant. Although the plaintiff expressly prayed in the plaint for damages in consequence of an alleged breach of contract of employment, he also prayed in the plaint for such other and further relief as to the Court may seem meet. Issue No. 5 tried by the learned District Judge in this case was

as follows :—“ Did the defendant terminate the services of the plaintiff unlawfully and without just and reasonable cause on 20.9.60? ”. That issue was answered in the negative by the learned District Judge who held that the plaintiff was not entitled to be reinstated in service as he had been rightly dismissed, and further that the plaintiff did not come under the category of persons who had a right to employment under the Government of Ceylon. The action of the plaintiff was dismissed with costs by the learned District Judge. The plaintiff has appealed from the judgment and decree.

P6 dated 20th September, 1960, is a letter by which the Director of Land Development informed the plaintiff that his services were terminated with immediate effect, and the reason for such termination appears from the letter P6 to be that the plaintiff was not authorised to stay in Ceylon because his final visa had expired on 4. 12. 56. The Public Service Commission has, by order made under section 61 of the Ceylon (Constitution) Order in Council, 1946, published in *Gazette* No. 10,847 of October 7, 1955, delegated to the head of the department “ the power to dismiss or to otherwise punish for misconduct, on any ground other than on the ground of conviction, a public officer (other than an officer of any of the Combined Services or of the Quasi Clerical Service) who is working in a Department assigned to a Minister and—

- (a) who is the holder of a pensionable post and who is paid a salary not exceeding Rs. 2,700/- per annum, or
- (b) who is the holder of a non-pensionable post and who is paid a salary not exceeding Rs. 3,180/- per annum ”.

It is clear from the terms of the delegation that the head of the department cannot dismiss an officer otherwise than on the ground of misconduct. In the case before us the Director of Land Development has terminated the services of the plaintiff, not on the ground of misconduct, but on the ground that the plaintiff's visa had expired and that therefore he was not authorised to stay in Ceylon. The termination of the services of the plaintiff is therefore void and inoperative. Accordingly we hold that the learned District Judge was wrong in holding that the defendant did not terminate the services of the plaintiff unlawfully.

Crown Counsel appearing for the Attorney-General submitted that according to the law now in force in Ceylon an officer in the service of the Crown cannot sue the Crown for a breach of contract of employment. He did not, however, submit that it was not open to a public servant, who is aggrieved by the unlawful termination of his services, to institute an action seeking the relief of a declaration that the termination of his services was void and inoperative. In fact this Court has held in the case of *Silva v. The Attorney-General*¹ that it is open to a servant of the Crown, who has been unlawfully dismissed from the Public Service by the Public

¹ (1958) 60 N. L. R., 145.

Service Commission, to seek to obtain from a competent Court a declaration that he has not been dismissed by the Public Service Commission according to law. The breach of contract of employment alleged by the plaintiff in his plaint is the unlawful termination of his services by the Director of Land Development. The trial Court examined the question whether the termination of the plaintiff's services was according to law or not. We notice that the learned District Judge has also examined the question whether, as held in the case of *Silva v. Attorney-General*, it was open to the District Judge to declare that the termination of the plaintiff's services was void and inoperative. The learned District Judge acknowledged that he was bound by the decision in the case of *Silva v. Attorney-General*. He has not made the declaration that the termination of the plaintiff's services was void and inoperative because he has taken the view that the Director of Land Development had the power to terminate the plaintiff's services and that such power was lawfully exercised.

For the aforesaid reasons we are of the view that, having regard to the prayer of the plaintiff for such other and further relief as to the Court may seem meet, it is open to this Court to make a declaration that the termination of the plaintiff's services by the Director of Land Development was void and inoperative. Accordingly we make that declaration and set aside the judgment and decree of the learned District Judge.

The plaintiff-appellant is entitled to the costs of appeal and also to the costs of the trial in the District Court.

SAMERAWICKRAME, J.—I agree.

Appeal allowed.
