

1948

Present: Gratiaen J.

VALLIPURAM, Petitioner, and POSTMASTER-GENERAL, Respondent.

S. C. 502—In the matter of an Application for a Writ of Mandamus on the Postmaster-General

Writ of Mandamus—Dismissal of public officer—Pleasure of Crown—Inquiry into charges—Irregularity—Ceylon (State Council) Order in Council 1931—Section 86 (1)—Royal instructions.

The effect of Article 86 of the Ceylon (State Council) Order in Council, 1931, is that all public servants in Ceylon hold office during the pleasure of the Crown subject to any specific law to the contrary.

The Royal instructions regulating the procedure for dismissal are issued merely for the direction of the Governor and do not constitute a contract between the Crown and its servants.

APPPLICATION for a writ of *mandamus* on the Postmaster-General.

E. B. Wikramanayake, K.C., with *A. Sivagurunathan*, for the petitioner.

Cur. adv. vult.

December 1, 1948. GRATIAEN J.—

The petitioner was a Postmaster employed as an officer of the Ceylon Post and Telegraph Department. On June 21, 1945, by an order of the Governor, he was dismissed from the Public Service. Thereafter he unsuccessfully sought through various channels to obtain redress and on October 29 of this year (40 months after the event) he applies to this Court for relief. It is not pretended that he has any other object in view than to challenge the legality of his dismissal and thereby to secure his reinstatement as a public servant. He complains that he was not given the fullest opportunity of exculpating himself in respect of the charges framed against him, and that in particular he was not permitted to cross-examine witnesses or to have access to documents used against him. In these alleged circumstances he asks this Court for a writ of *mandamus* “ordering the Postmaster-General of Ceylon to hold an inquiry into the charges framed against him”.

On the date of the petitioner's dismissal Ceylon was a Crown Colony and in terms of Article 86 (1) of the Ceylon (State Council) Order in Council, 1931, the appointment, promotion, transfer, dismissal and disciplinary control of public officers in the Colony vested in the Governor subject (as far as is relevant to this present application) to any instructions given under the Royal Sign Manual and Signet. Article 86 (2) conferred in the Governor a limited right to delegate his powers in this connection. It is expressly laid down in the Royal Instructions to the Governor dated December 6, 1941, that, *inter alia*, "all commissions granted by the Governor or by any public officer acting under his authority shall, unless otherwise provided by law, be granted during Our pleasure only". The Royal Instructions also lay down the procedure to be followed before the Governor proceeds to dismiss different grades of public officer. In the case of any officer in the grade to which the petitioner belongs, "the grounds of intended dismissal shall be definitely stated in writing and communicated to him in order that he may have full opportunity of exculpating himself, and the Governor shall investigate the case with the aid of the head of the department in which the officer shall then be serving". The petitioner, at this late stage, challenges the legality of his dismissal on the ground that these instructions were in his case substantially ignored. I am not satisfied that his complaint is in the slightest degree justified, but, even if it were, it seems to me that a Court of Law would have no right to interfere. The petitioner's application proceeds upon a misconception as to the position of public officers in this Island not only in 1945, when the dismissal took effect, but also today, when re-instatement is sought through the intervention of this Court.

The effect of Article 86 of the Ceylon (State Council) Order in Council, 1931, coupled with the Royal Instructions to which I have referred, was that all public servants in the Island held office during the pleasure of the Crown, *subject to any specific law to the contrary*. In the case of the petitioner, there is not and there never was at any time any law by which he held office otherwise than during the pleasure of the Crown. The Royal Instructions regulating the procedure for dismissal merely issued directions for the guidance of the Governor, and did not constitute a contract between the Crown and its servants. As Lord Hobhouse stated in *Shenton v. Smith (1895) A. C. 229*, where the Privy Council considered a similar case from Western Australia, "if any public servant considers that he has been dismissed unjustly, his remedy is not by a law-suit but by an appeal of an official or political kind". Again, with regard to the position where there is a departure from the Royal Instructions regulating the procedure for dismissal he says that any officer who departs from the regulations "is answerable not to the servant dismissed but to his superior officers". The purpose of the Royal Instructions is to assure that the tenure of office, though at pleasure, will not be subject to capricious or arbitrary action, but will be regulated by the rules but there is *no right enforceable by action* to hold office according to the rules and the officer can therefore be dismissed notwithstanding the failure to observe the prescribed procedure". *Venkata Rao v. Secretary of State (1937) A. C. 248*.

It seems to me clear that the petitioner held office in the Public Service until June 21, 1945, at the pleasure of the Crown, and that he has therefore no remedy available to him at law for the purpose of enforcing any alleged contractual rights arising from that employment. Besides, his position is even more untenable today. Since his dismissal Ceylon has ceased to be a Crown Colony, and today enjoys the status of a self-governing Dominion in the Commonwealth of Nations. The status of her public servants is now regulated by Article 57 of the Ceylon (Constitution) Order in Council, 1946 (as amended) which declares that "save as otherwise provided by 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". In the result what was provided by the Royal Instructions under the old constitution is now expressly laid down by law. There is no possible means by which a public officer who was dismissed in 1945, can claim *as of right* a place in the Public Service of today. I refuse the petitioner's application. To allow a rule *nisi* to issue would I think encourage him to entertain false hopes which would not be justified.

I desire to add that I can find nothing in the Royal Instructions dated December 6, 1941, which entitles a public officer to insist upon any particular form of procedure being adopted during the investigations of charges framed against him. The duty to give him "a full opportunity of exculpating himself" should be honestly discharged, but questions of the procedure to be adopted in discharging that duty fall within the province of administrative discretion over which the Courts will not exercise any over-riding authority. The application is refused.

Application refused

