

1943                    *Present : de Kretser and Wijeyewardene JJ.*

THURAISAMY, Appellant, *and* THAILPAYAR, Respondent.

231—D. C. Point Pedro, 1,300.

*Teacher—Wrongful dismissal—Claim for salary in lieu of notice.*

An uncertificated teacher in the circumstances of this case is entitled to no more than two months' salary in lieu of notice before his services are discontinued.

**A**PPEAL from a judgment of the District Judge of Point Pedro.

L. A. Rajapakse (with him V. F. Gunaratne), for defendant, appellant.

No appearance for plaintiff, respondent.

*Cur. adv. vult.*

April 8, 1943. WIJEYWARDENE J.—

The plaintiff, an uncertificated teacher, filed this action against the defendant, the manager of a school, for the recovery of Rs. 2,000 as damages sustained by him in consequence of the defendant discontinuing his services without notice and without reasonable cause.

The District Judge held that the discontinuance was wrongful and awarded the plaintiff Rs. 620 and costs in that class. He assessed the damages on the following basis:—

	Rs.
1. For six months' salary in lieu of notice ..	120
2. "For opportunity lost by plaintiff" ..	300
3. "For the postponement of plaintiff's right to get increments in his salary" caused by his dismissal ...	200

The evidence shows clearly that the defendant was not actuated by any improper motive in discontinuing the plaintiff's services. The defendant was compelled to act as he did owing to the situation created by the Department of Education issuing to him somewhat inconsistent and irreconcilable instructions with regard to the appointment of the plaintiff and the subsequent discontinuance of his services. The defendant had to carry out the orders issued to him by the Department in 1940, as, otherwise, his school ran the risk of being deprived of the yearly grant from Government. The defendant made every effort to retain the services of the plaintiff and the plaintiff was aware of it. But these facts do not avail the defendant in resisting the plaintiff's claim. He has committed a breach of contract and he is answerable in damages. I shall, therefore, proceed to consider the question of damages.

The plaintiff was employed about October, 1936, on a salary of Rs. 35 a month as an uncertificated teacher. He was willing to be employed for three years as he knew the defendant was taking him in place of another teacher, one Mr. Samundi, who had gone on study leave for a 3-years' course at a training school for teachers. As the Department of Education, however, was not prepared to approve of the appointment for a definite period of three years, the plaintiff was employed as a "permanent" member of the staff. After some time the plaintiff's salary was reduced to Rs. 20 a month in accordance with the Departmental Regulations as the plaintiff continued to remain an uncertificated teacher. When Mr. Samundi concluded his 3-years' course, the Department of Education insisted on the defendant re-employing him at the school as from April 21, 1940, and the defendant then gave notice to the plaintiff on March 29, 1940, determining the plaintiff's employment as from April 21, 1940. Under the Roman Dutch Law which is applicable to the present case an employee is entitled to a reasonable notice and what is reasonable notice will depend on the circumstances of each particular case (*Nathan Vol. 2, page 902*). Several decisions of this Court were cited to us on the question of reasonable notice. But where a decision depends upon facts, a variation in facts deprives the alleged precedent of value, and it is useful only as an illustration of the way in which other judges considered a case of this kind. In the present case there is



evidence to show that the plaintiff was willing to be employed as a teacher on an estate school or as a minor clerk in the Irrigation Department. I think that in the circumstances of this case I am treating the plaintiff generously when I hold that he should have been given two months' notice. The plaintiff would, therefore, be entitled to claim Rs. 40 as two months' salary in lieu of notice.

I find it difficult to understand what was meant exactly by the District Judge when he awarded a sum of Rs. 300 as damages for "the opportunity lost by the plaintiff". It is possible that the judge was thinking of the following piece of evidence given by the plaintiff :—

"After teaching three years in a school, an uncertificated teacher is expected to go on study leave and qualify himself as a trained teacher at a training centre. As a result of my discontinuance, I have lost the chance of training myself. I have not lost the right to get myself trained. I have lost the opportunity of getting employment after being trained. A teacher going into training resumes his course in the school after the period of training is over."

Now according to the plaintiff's evidence the only examination the plaintiff has passed is the Junior School Certificate examination. During the period of his employment under the defendant he sat for the Training College Entrance Examination but failed to secure a pass. He was therefore not qualified either to enter the Training College or a Training School, as under Regulation 25 of the Departmental Regulations (D 8) only those who had a Senior School Certificate are eligible for admission to a training school. Apart from this, I do not think it right to take into consideration this so called "lost opportunity" after the court had reached a decision on the question of reasonable notice. If the plaintiff had been given adequate notice, he could not have claimed damages on the ground of "lost opportunity". The period of notice is so calculated as to ensure the employee getting a reasonable opportunity of securing another employment. If the plaintiff found an employment as a teacher after getting reasonable notice, then there could have been no question of compensation for "lost opportunity", as he would have been then in a position to return to his new school after a course of training at a training school. If he failed to get a new employment after getting reasonable notice he could not have made a claim for damages for "lost opportunity". It would have meant that he was permitted to make a claim for damages as he failed to secure a new employment though he had been given reasonable notice. The position becomes clear when it is realized that the period of reasonable notice is calculated after taking all the relevant facts into consideration and that the period so fixed is sufficient in the view of the judge for the employee to get a suitable employment elsewhere.

The District Judge has awarded Rs. 200 as damages on the third ground given by him. He has erred in doing so as the plaintiff being an uncertificated teacher was not entitled to any increments. If the District Judge had in view the increments which the plaintiff might get at a future date after the plaintiff had qualified himself for admission at a

training school or the Training College and completed his three years' course of training successfully then clearly such increments are too remote to be taken into consideration.

On the above findings the plaintiff is entitled to Rs. 40 and the costs which he would have got in a contested action in the Court of Requests for the recovery of Rs. 40. The defendant is entitled to the excess costs incurred by him in having to contest a claim for Rs. 2,000 in the District Court. The plaintiff will have to pay the defendant in addition the costs of this appeal.

I set aside the decree of the District Court and order decree to be entered as directed above.

DE KRETZER J.—I agree.

*Judgment varied.*

