JAMAICA

Reported
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IN THE COURT OF APPEAL

CAYMAN ISLANDS CIVIL APPEAL No. 4 of 1975

BEFORE: The Hon. President (Ag.)
The Hon. Mr. Justice Edun, J.A.
The Hon. Mr. Justice Zacca, J.A. (Ag.)

CHESTER EBANKS v. R.F. POCOCK & THE ATTORNEY GENERAL

Hugh Small and O. Panton for the appellant.

R.N. Donaldson for the respondents.

June 26, July 31, 1975

LUCKHOO, P.(Ag.):

This is an appeal against the decision of the Judge of the Grand Court, Horsfall, J., dismissing the action of the appellant Chester Ebanks. The action was one claiming a declaration that the appellant is still a member of the Cayman Islands Police Force and entitled to all emoluments and privileges consistent with his being a member of the Cayman Islands Police Force and payment to him of all emoluments due and arising as from April 24, 1972; alternatively damages for wrongful dismissal from his employment in the Force.

The main questions which arose for determination at the hearing before the learned Judge of the Grand Court were whether the dismissal was in fact wrongful and in breach of the provisions of the Police Force Law, Cap. 126 of the 1963 Revised Edition of the Laws of the Cayman Islands and if so whether the action brought by the appellant was maintainable.

The facts of the case as found by the learned trial judge may be summarised as follows. The appellant, a corporal in the Cayman Islands Police Force, entered the office of Superintendent of Police Roy Archer on the morning of April 24, 1972 and told Supt. Archer that he noticed that he was put down for the guard of honour but could not make it because his tunic was too tight. Supt. Archer refused to accept that excuse and informed the appellant that he would still be on the guard of honour. At about 2 p.m. that day Supt. Archer saw a medical certificate in respect of the appellant. That certificate purported to have been issued on the same day stated that the appellant was suffering from bronchitis and was unfit to carry on his occupation until April 30. Supt. Archer caused Asst. Inspector of Police Soloman to inform the appellant that the Commissioner of Police was not accepting the medical certificate and that the appellant was required to return to work and prepare himself for the guard of honour failing which he was t bring in his stripes. The appellant upon receipt of that message considered himself dismissed from the Force. At about 3.35 p.m. he returned to Supt. Archer dressed in plain clothes and handed in his badge of office, a two stripe chevron. A formal letter dated April 24, 1972 signed by the Commissioner of Police R.F. Pocock informi the appellant that he was dismissed from the Force with effect from that date but giving no reasons for the dismissal was duly received by the appellant. Two letters dated April 26, 1972 and May 16, 1972 from the appellant to the Commissioner of Police requesting to be informed of the reason for dismissal received no reply.

The learned trial judge in holding that the appellant could have no cause of action for wrongful dismissal said that there was no law pleaded in the statement of claim restricting the Crown's absolute power of dismissal and that no such law had been mentioned in evidence. The learned trial judge also rejected the appellant's claim for a declaratory judgment that he is still a member of the Force viewing it as an attempt by a side-wind to den the absolute right of the Crown to dismiss its servant at pleasure.

In the result the learned trial judge accepted the contentions advanced on the part of the respondents that no cause of action was disclosed on the appellant's statement of claim and that the appellant was dismissable at pleasure.

Counsel for the appellant Mr. H. Small has rightly conceded that the appellant is a public servant of the Crown. He recognises that unless it is otherwise provided a servant of the Crown holds office during the pleasure of the Crown. However, he submits that by the provisions of s. 10 (b)(i) of the Police Force Law, Cap. 126 it is so otherwise provided in the case of members of the Force who are of non-gazetted rank and the appellant at the time of his dismissal held the rank of corporal - a non-gazetted rank. Section 10 of the Police Force Law, Cap. 126 provides as follows -

> "10. Any member of the Force of non-gazetted rank may at any time during the currency of any term of engagement -
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> (a) be discharged, when he -
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> (i) has been pronounced by a medical officer to be physically or mentally unfit for further service; or
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> (ii) has been generally inefficient in the discharge of his duties; or
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> (iii) has applied for his discharge under subsection (2) of section 9 or has been permitted by the Commissioner of Police to resign;
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> (b) be dismissed when he -
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> (i) has been sentenced either by the Commissioner of Police or the Administrator to be dismissed from the Police Force; or
>
> (ii) has been convicted of any criminal offence before any Court of law exercising criminal jurisdiction whether within or without the Islands."

Mr. Small's contention is that the provisions of s. 10 (b)(i) of Cap. 126 limit the powers of dismissal of members of the Force of non-gazetted rank to cases where the officer has had a charge or charges against him preferred, heard and adjudicated on and dismissal

is the form of punishment or sentence imposed, the word "sentenced" in those provisions having such implication and having to be read along with the provisions of s.63 (1)(b) of Cap. 126 which relate to the making of rules providing for the discipline of members of the Force and offences against discipline, and punishments therefor. Rules were made in 1961 under the provisions of s. 63 (1)(b) in that regard. It is common ground that no enquiry as contemplated by the rules pertaining to offences against discipline was held in the case of the appellant.

Mr. Donaldson for the respondents submits that on the face of the statement of claim there is no remedy available to the appellant and further that s. 10 (b) of Cap. 126 is an enabling and not a limiting provision - enabling the Commissioner of Police to exercise the powers of the Crown however unfair or outrageous those powers may appear to be. In so far as the rules made s. 63 relating to offences against discipline are concerned Mr. Donaldson contends that they are immaterial to the power of the Crown to dismiss its Crown servants at will.

During the course of the argument before us reference was made to the cases of Shenton v. Smith (1895) A.C. 229, Gould v. Stuart (1896) A.C. 575 and R. Venkata Rao v. Secretary of State for India in Council (1937) A.C. 248 among others. In Shenton v. Smith Dr. Smith held office in the government medical service of Western Australia. He was dismissed and brought an action for damages making the Colonial Secretary the defendant. Dr. Smith relied upon certain rules and regulations of the service as a part of his contract of service. His action tried by jury succeeded. On an appeal by the defendant to the Full Court the judges of that Court being equally divided the verdict of the jury stood and there was a further appeal to the Judicial Committee of the Privy Council. Lord Hobhouse in giving their Lordships' opinion said (at p. 234) -

> "It appears to their Lordships that the proper grounds of decision in this case have been expressed by Stone J. in the Full Court. They consider that, unless in special cases where it is otherwise provided, servants of the Crown hold their offices during the pleasure of the Crown; not by virtue of any special prerogative of the Crown, but because they are the terms of their engagement, as is well understood throughout the public service. 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......
> ....
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> As for the regulations, their Lordships again agree with Stone J. that they are merely directions given by the Crown to the Governments of Crown Colonies for general guidance, and that they do not constitute a contract between the Crown and its servants."

In Gould v. Stuart, Stuart held office in New South Wales under and in accordance with the provisions of the Civil Service Act, 1884, of that colony as a clerk at a yearly salary. Before his service had been determined in the manner provided by the Act the Government dismissed him. He brought a suit to recover damages for dismissal. To this the defendant pleaded that Stuart as a servant of the Crown held office only during the pleasure of the Crown and that there was nothing in the Civil Service Act, 1884, which prevented the Government from terminating the employment of an officer under it at any time, and that it had been terminated accordingly. Stuart demurred to the effect that he held office for life or during good behaviour and could only be dismissed on the special grounds and in the special manner provided by the Act. There were certain disciplinary regulations contained in Part III of the Act relating to the imposition of a fine, suspension or dismissal of officers. The Supreme Court of New South Wales gave judgment for the plaintiff Stuart on the demurrer. Upon an appeal by the defendant from that order to the Judicial Committee of the Privy Council it was held that the disciplinary provisions contained in the Act, being manifestly intended for the protection and benefit of the officer, were inconsistent with importing into the contract of service with the Crown the term that the Crown may put an end to it at is pleasure.

In R. Venkata Rao v. Secretary of the State for Indi- in Council, the appellant who, as the headnote to the report stat

held office in the civil service of the Crown in India, as a reader in the Government Press, Madras, fell under suspicion of being concerned in a leakage of information in respect of certain examination papers, and was dismissed from the service. A claim against the Secretary of State for India in Council in damages for wrongful dismissal was dismissed by the trial court. The Appellate Court dismissed the appellant's appeal. Upon a further appeal to the Judicial Committee it was held that although the procedure prescribed by the Civil Services Classificiation Rules 1920-24, made under s.96 B, sub-s. 2, of the Government of India Act was not followed at the official inquiry which proceeded the dismissal nevertheless the appellant's employment was by the express terms of s. 96 B held "during His Majesty's pleasure" and there was no need for the implication of this term and no room for its exclusion and there was no right in the appellant enforceable by action and he could be dismissed notwithstanding the failure to observe the procedure prescribed by them. Section 96 B and the rules made thereunder made provision for the redress of grievances by administrative process.

How does the instant case stand in relation to those cases? Section 10 (b)(i) of Cap. 126 provides that any member of the Force of non-gazetted rank may at any time during the currency of any term of engagement be dismissed "when he has been sentenced either by the Commissioner of Police or the Administrator to be dismissed from the Police Force." In this connection it should be observed that by s.6 where by any law the Commissioner of Police is empowered to perform functions, he may, subject to the approval of the Administrator, and unless by Law he is expressly prohibited from so doing, depute any member of the Force by name to perform such functions on his behalf. The very terms of s. 10 (b) show that dismissal is not automatic upon a sentence of dismissal being pronounced. The word "may" is not equivalent to "shall" in the context of the provision. If it were then under s. 10 (b)(ii) once a member of the Force of

non-gazetted rank is convicted of an offence of a trivial nature he would automatically be dismissed from the Force. Such a result could hardly have been the intention of the Legislature. I agree with the interpretation given the word "sentenced" by Mr. Small and hold that the provisions of s. 10 (b)(i) contemplate that a charge shall be preferred against the officer and an examination made into the truth of the charge. To that end Rule 15 of the Cayman Islands Police Force Rules 1961 made under the provisions of s. 63 of the Cayman Islands Police Force Law 1961 (now Cap. 126 of the Revised Edition of the Laws) provides what acts or omissions by a member of the Force of non-gazetted rank shall constitute an offence against discipline. Rule 16 provides that any such member charged with committing any offence against discipline shall be brought before the Commissioner of Police as soon as possible. Rule 17 provides for the punishments which may be awarded after examination by the Commissioner of Police into the truth of any charge of an offence against discipline and a decision against the accused. In the case of a member of the Force below the rank of 2nd Class Sergeant the punishments which may be awarded (before the amendment of rule 17 by the Cayman Islands Police Force (Amendment) Rules, 1974) are -

(i) dismissal; or

(ii) reduction in rank or class; or

(iii) fine not exceeding £5; or

(iv) severe reprimand; or

(v) extra duties not exceeding seven in number; or

(vii) extra fatigues not exceeding seven in number; or

(viii) admonition.

At all material times there was a proviso that "a sentence of dismissal or reduction in rank or class shall require the confirmation of the Administrator." During the hearing doubts were expressed by counsel as to whether that proviso was intra vires the provisions of s. 10 (b) of Cap. 126. The provisions of s. 10 (b) may be contrasted with those of s. 38 (which relate to inciting rioting in the Police Force) whereby conviction on indictment of a member of the Force for an offence thereunder results in the automatic dismissal of that member of the Force with effect from the date of conviction. To be contrasted with s. 38 is s. 39 (which relates to other offences by members of the Force) there being no provision in the latter section for automatic dismissal upon conviction thereunder. Such a case would fall to be dealt with under s. 10 (b)(ii) and the non-gazetted officer may be dismissed from the Force. As was the case in Gould v. Stuart the provisions of s. 10 (b) are manifestly intended for the protection and benefit of the officer of non-gazetted rank and are likewise inconsistent with importing into the contract of service the term that the Crown may put an end to it at pleasure. Unlike the case of R. Venkata Rao there is no express provision in the Law that the appellant's employment is held during Her Majesty's pleasure. Unlike the case of Shenton v. Smith there is in the instant case s. 10 (b) the effect of which has already been stated.

I would conclude that the appellant was wrongfully dismissed. The nature of the relief to which the appellant is entitled must now be considered. It is not clear from the evidence adduced what period of the term of his engagement, if any, remained at the time of the determination of the matter by the trial judge. In the circumstances a declaration that he is still a member of the Force ought not be be granted. The appropriate remedy in my opinion is that he should be awarded damages for wrongful dismissal and such an award would include payment to

him of all emoluments due and arising as from April 24, 1972. I would allow the appellant's appeal, order that judgment be entered in his favour against the respondents and direct that the matter be remitted to the Grand Court for assessment of the amount of damages to be awarded him for wrongful dismissal. The appellant should have his costs here and in the Court below to be agreed or taxed.

EDUN, J.A.:

I agree. I have nothing useful to add.

ZACCA, J.A. (Ag):

I agree.

LUCKHOO, P. (Ag.):

In the result the appeal is allowed. Judgment is entered in favour of the plaintiff (appellant) against the defendants (respondents). The matter is remitted to the Grand Court for assessment of the amount of damages to be awarded the plaintiff (appellant) for wrongful dismissal. The appellant shall have his costs here and in the Court below to be agreed or taxed.