

24, 1969

1.

IN THE ~~JUDICIAL COMMISSION~~ No. 33 of 1967  
~~OF THE PRIVY COUNCIL~~

ON APPEAL FROM THE COURT OF APPEAL  
OF THE SUPREME COURT OF JUDICATURE

GUYANA

B E T W E E N :

HER MAJESTY'S ATTORNEY  
GENERAL FOR GUYANA  
Appellant

and

CECILE NOBREGA  
Respondent

10

CASE FOR THE APPELLANT

Record

1.	This is an appeal from an order of the Court of Appeal of the Supreme Court of Judicature, Guyana (Sir Kenneth Stoby Ch. and Cummings J.A., Luckhoo J.A. dissenting) dated the 3rd April, 1967 allowing the Respondent's appeal from the judgment of Chung J. dated the 20th January, 1966, refusing the declarations sought by the Respondent.	pp. 76-77 pp. 35-44  pp. 45-60 pp. 61-75 pp. 13-17  pp. 3-4
----	---	--

2. This appeal raises the questions whether the Ministry of Education of British Guiana, as the representative of the Crown, has the right to dismiss its servants at pleasure or to reduce its servants' salaries, whether the Respondent was so dismissed, and if so, whether such dismissal in any way infringed the Respondent's legal rights.

3.	On the 11th December, 1964, the Respondent was appointed as a Grade I Class I teacher at the Lodge Government School by the Ministry of Education of British Guiana by letter of that date at a salary at the rate of \$251 per month. On the 8th February, 1965, the Respondent began teaching at Lodge Government School.	p. 9 Ex.D. p.87  p. 9
----	---	--------------------------------

30

UNIVERSITY OF LONDON  
SCHOOL OF LEGAL STUDIES  
- 2 MAR 1967  
RUSSELL SQUARE  
LONDON, W.C.1.

2.

Record  
p. 9  
Ex.D p.88

On the 17th March, 1965, the Respondent received a letter signed on behalf of the Chief Education Officer in the following terms:-

17th March, 1965.

"Dear Madam,

With reference to a letter dated 11th December, 1964, from this Ministry appointing you a Mistress at Lodge Government School with effect from 4th December, 1964, I am to request that you send to this Ministry your birth and academic certificates (if possible by the Ministry's Messenger or by return mail).

10

2. Your prompt attention to this request will be greatly appreciated.

Yours faithfully,"

The Respondent did not comply with the Chief Education Officer's request and on the 19th March, 1965, the following letter signed by the Chief Education Officer was received:-

20

19th March, 1965

"Dear Madam,

Because of your failure to submit to this Ministry your birth and academic certificates as requested so to do in my letter dated 17th March, 1965, I have to inform you that your appointment as a Grade I Class I teacher has been rescinded as from today, 19th March, 1965.

p. 9  
Ex.E p.89

2. The effect of such rescission is that you will be paid as an unqualified assistant mistress pending the submission of the documents asked for by me. Upon receipt of those documents your status as a teacher will be determined, and a new letter of appointment issued to you.

30

Yours faithfully,"

Upon receipt of the letter of the 19th March, 1965, the Respondent, the same day, submitted the relevant documents to the Chief Education Officer. No further information was given to the Respondent nor was there any other communication, but when she received her salary, it had been reduced to \$92 per month from the 20th March, 1965. At first the Respondent did not accept the reduced salary but subsequently took it without prejudice to her case; she continued to perform the same duties as those assigned to her on the 8th February, 1965.

Record  
p. 9

4. By her Statement of Claim dated May, 1965, the Respondent set out the facts relevant to her claim, alleged that the purported reduction in her salary and status was effected without lawful authority and claimed, inter alia, the following relief:-

pp. 3-4

(a) a declaration that the purported rescission of the Respondent's appointment as a Grade I, Class I, Teacher was ultra vires and of no effect;

(b) a declaration that the Respondent was entitled to receive from the Government of British Guiana in respect of her services as a teacher at Lodge Government School salary at the rate of \$251.00 (two hundred and fifty one dollars) per month;

(c) a declaration that the purported reduction of the Respondent's salary by the Government of British Guiana acting by or through their servants and/or agents from \$251.00 (two hundred and fifty one dollars) per month in respect of such service to \$92.00 (ninety two dollars) was ultra vires and of no effect.

5. By the Defence dated the 19th May, 1965, the Appellant admitted the relevant facts, alleged that on the 25th March, 1965, the Respondent was appointed as an unqualified assistant mistress with effect from the 20th March, 1965, at a salary of \$84.00 per month, denied that that reduction in the Respondent's salary and

pp. 5-7

Record

status was effected without lawful authority and contends that the Respondent was not entitled in law to the relief claimed and that the questions of the Respondent's appointment and/or reduction of salary were matters exclusively within the jurisdiction of the Crown.

pp. 8-10 6. The only evidence given was that of the Respondent; there was no dispute as to the facts.

pp. 13-17 7. In his judgment dated the 12th February, 1966, the learned trial judge after setting out the pleadings and correspondence continued:- 10

p. 15. 39.  
- p.16.2

"Both Counsel for the Plaintiff and Counsel for the Crown agree that there was a contract of service and that the Crown could dismiss at pleasure. The only issue, then, in the present case is whether or not the Crown can, without dismissal, reduce the salary of its servant."

p. 16.39 -  
p. 17.10 The learned trial judge, relying upon a passage in Crown Proceedings by Glanville N. Williams supported by Rigby L.J. in Worthington v. Robinson 1897 75 L.T. at p.446, found as follows:- 20

"In the present case Exhibit "F" clearly communicated that the Plaintiff's appointment as a Grade I Class I teacher has been rescinded as from 19th March, 1965, and a new appointment was offered to her. She could have exercised her right in leaving the service, but having not done so it must be taken that she accepted that new appointment subject to her rights being determined by the Court. She can still refuse to serve if she wishes. 30

As has already been stated by Glanville Williams:

"The Crown has a right to reduce its servant's pay. In the case of civil servants this right follows as a logical consequence from the right to dismiss at will" 40

And in the present case the Crown mitigated the exercise of its legal right of dismissal by rescinding the Plaintiff's appointment as a Grade I Class I Teacher and continuing her service as an unqualified assistant mistress at a lower rate of pay. In the circumstances, the declaration sought is refused."

Record

8. The Respondent appealed to the Court of Appeal of the Supreme Court of Judicature, Guyana. The appeal was heard by Sir Kenneth Stoby, Ch., Luckhoo and Cummings JJ.A. and judgment was given on the 3rd April, 1967, allowing the Respondent's appeal by a majority. pp. 19-21
9. In his Judgment, Sir Kenneth Stoby, Ch., stated the facts of the case relevant to the appeal as they had been set out by the learned judge below and said that the Respondent's counsel did not contest the right of the Crown to dismiss at pleasure unless the Crown's right was restricted by statute, his only argument being that the Crown could not unilaterally vary a contract and that without dismissing the Respondent the Crown reduced her salary although she was performing the same duties. He said that Counsel for the Crown did not contend that the Crown had dismissed the Respondent and entered into a new contract and that Counsel for the Crown specifically rejected the Court's suggestion, or at least did not adopt it, that the letter of the 19th March, 1965, could be treated as a dismissal. He said that the issue for the Court to decide was whether the Crown had a right to reduce salary without the consent of an employee. He found that the word "rescinded" in the letter dated the 19th March, 1965, in the circumstances of the case, did not amount to a dismissal of the Respondent or a termination of her appointment either in fact or in law. After considering the right of the Crown to dismiss its servants at pleasure in the light of the authorities, the learned Chancellor said that there was very little authority on the subject of a Crown servant's legal position who had not been dismissed but had had her salary reduced. He considered that if a contract existed then until the contract was determined, the rights and pp. 35-44  
p.37.39-45  
p. 38. 1-7  
p. 38.8 -  
p. 39.7  
pp. 39-41  
p. 41. 4-6  
p. 41. 7-23

<u>Record</u>	liabilities under the contract remained. He illustrated that proposition and said that the learned trial judge relied for his decision on a passage by <u>Glanville Williams</u> in his work on <u>Crown Proceedings</u> as follows:	
p. 41.25-35	"The Crown has a right to reduce its servant's pay. In the case of Civil Servants that right follows as a logical consequence from the right to dismiss at will. If the Crown can dismiss at will it can offer to mitigate the exercise of its legal right by continuing the contract of service at a lower rate of pay. It seems on principle that the offer could be refused and that the servant could quit the service without rendering himself liable to an action for breach of contract, even if otherwise he would be liable."	10
p.41.36-47	The learned Chancellor considered that statement correctly to set out the law if the writer were postulating that the Crown could inform its servant that it was proposed to dismiss him but instead of so doing a new contract at a reduced salary was offered; the employee might accept the new contract or refuse it - if he adopted the former course the matter would be at an end; if the latter, then he would be dismissed. The learned Chancellor did not consider that the learned trial judge interpreted the passage in that way. The learned Chancellor said that the Crown did not have an unequivocal right to vary an existing contract by unilateral action and considered the view expressed by Rigby L.J. in <u>Worthington v. Robinson</u> (1897) 75 L.T. 446 to be obiter in a case where the Crown had never contended that the servant was dismissed and where the Crown was given specific authority by statute to reduce servants' salaries. The learned Chancellor considered the Crown to be in no special position when considering a unilateral alteration of the terms of a contract and that no authority had been cited to him, nor had he found any, to lend support to the view that the Crown could unilaterally vary the terms of a contract. He concluded that the Appellant had not dismissed the Respondent but had merely	20
p.42. 2-32		30
p.43. 2-8		40
pp.44. 21 - end.		

reduced her salary and in allowing the appeal with costs granted the declarations as asked.

Record

10. Cummings J.A. agreed with the learned Chancellor's judgment and found in addition that the reduction of the Respondent's pay resulted in an unauthorised compulsory taking of the Respondent's property in violation of Article 12 of the Constitution of British Guiana (now Article 8 of the Constitution of Guyana) which provides:-

pp. 45-60  
pp. 57-60

"12. (1) No interest in or right over property of any description shall be compulsorily acquired, and no such property shall be compulsorily taken possession of, except by or under the authority of written law and where provision applying to that acquisition or taking of possession is made by such a law -

(a) requiring the prompt payment of adequate compensation;

(b) giving to any person claiming such compensation a right of access, for the determination of his interest in or right over the property and the amount of compensation, to the Supreme Court; and

(c) giving to any party to proceedings in the Supreme Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a Court of original jurisdiction.

(2) Nothing in this article shall affect the operation of any law of the Legislature in force immediately before the date when this Constitution comes into force, or the making after that date and operation of any law which amends or replaces any such law as aforesaid and does not -

Record

- (i) add to the interests, rights or property that may be acquired or taken possession of;
  - (ii) add to the purposes for which or circumstances in which any interest, right or property may be acquired or taken possession of;
  - (iii) make the conditions governing entitlement to any compensation or the amount thereof less favourable to any person having any interest in or right over any property; or 10
  - (iv) deprive any person of any right such as is mentioned in sub-paragraph (b) or sub-paragraph (c) of paragraph (1) of this article
- (3) Subject to the provisions of paragraph (5) of this article, nothing in this article shall be construed as affecting the making or operation of any law so far as it provides for the acquisition or taking of possession of property - 20
- (a) in satisfaction of any tax, rate or due;
  - (b) by way of penalty for breach of the law, whether under civil process or after conviction of a criminal offence;
  - (c) as an incident of a lease, tenancy, mortgage, charge, bill of sale of contract; 30
  - (d) of the Amerindians of British Guiana for the purpose of its care, protection and management;
  - (e) by way of the vesting and administration of trust property, enemy property, or the property of persons adjudged or otherwise declared bankrupt, persons of unsound mind, deceased persons, or 40



bodies corporate or unincorporate  
in the course of being wound up;

(f) in the execution of judgments or  
orders of courts;

(g) by reason of its being in a danger-  
ous state or injurious to the  
health of human beings, animals  
or plants;

10

(h) in consequence of any provision  
with respect to the limitation of  
actions; and or

(i) for so long as may be necessary  
for the purposes, of any exami-  
nation, investigation, trial or  
inquiry, or, in the case of land,  
the carrying out of work thereon  
for the purpose of soil conver-  
sation.

20

(4) Nothing in this article shall be  
construed as affecting the making or  
operation of any law for the compulsory  
taking of possession in the public interest  
of any property, or the compulsory acqui-  
sition in the public interest of any property,  
or the compulsory acquisition in the public  
interest in or right over property where  
that property of any interest or right is  
held by a body corporate which is estab-  
lished directly by any law in force in  
30 British Guiana and in which no moneys  
having been vested other than moneys pro-  
vided by any Legislature established for  
British Guiana.

30

40

(5) The resumption of possession by or  
on behalf of the Crown of any property  
expressed (in whatever manner) to be held  
by any person during Her Majesty's pleasure  
otherwise than by reason of a breach of  
any condition of defeasance subject to  
which such property was held as aforesaid  
shall be deemed to be a compulsory taking  
of possession of such property for the

Record

purposes of this article;

Provided that such resumption of possession shall not be required to be authorised by a written law."

pp.61-75  
p. 63. 43-  
end

11. In his dissenting judgment Luckhoo, J.A. set out the facts relevant to this appeal and considered that the words in paragraph 8 of the Defence, namely "the questions of appointment and/or reduction of salary are matters which are exclusively within the discretion of the Crown" were intended to notify the Respondent that the Crown would contend that there was a right, at the discretion of the Crown, to terminate the Respondent's appointment, or, alternatively, to reduce her salary. He examined the authorities establishing the right of the Crown to dismiss its servants at pleasure and concluded that the right could even be used arbitrarily. In considering whether the Respondent was in fact dismissed, the learned judge referred to Boston Deep Sea Fishing and Ice Co. v. Ausell (1888)

10

pp.64-67

p.67.17-21

p. 68

39 Ch.D.339 dealing with the rescission of a contract arising on the wrongful repudiation of the contract by one party being accepted by the other and operating as a determination of the contract from the time of such acceptance. He examined the letter dated the 19th March, 1965, and expressed his view that the language therein was unequivocal in telling the Respondent that her appointment was brought to an end. The learned judge said that as from the 19th March, 1965, the Respondent ceased to be a Grade I Class I teacher so that she would have had to vacate her office immediately unless a new opportunity of service was offered and accepted which would result in continuity; he said that such an offer was made in the second paragraph of the 19th March, 1965, letter and that the Respondent accepted and resumed her employment upon the terms and conditions stated therein.

20

p.70.10-20

p.70.10-31

The learned judge took the view that the Respondent's conduct in submitting her birth and academic certificates coupled with her further service after the rescission of the original appointment amounted to an acceptance of a new appointment as an unqualified assistant mistress.

30

40

p.71. 9-32

The learned judge concluded that there was nothing to prevent the Crown from dismissing and re-employing subsequently, or, immediately afterwards. After considering the trial judge's view as to the issue to be tried and as to the Respondent's acceptance of the Crown's rescission of her original appointment and her acceptance of the new appointment, the learned judge said that there was no question of reducing the Respondent's salary; he said that the devise of dismissal and re-employment could be legitimately used to bring about a reduction in status and salary provided the servant agreed to serve again. The learned judge then dealt with the question whether the Respondent's right to the contractual salary was a right of property which was protected by Article 12 of the then Constitution of British Guiana (now Article 8 of the Constitution of Guyana) and whether the unilateral action, as it was argued by Counsel for the Respondent, in depriving the Appellant of the contractual salary except in accordance with a term of the contract express or implied was a violation of the said Article rendering the deprivation unconstitutional and illegal. He said that on the assumption that the contractual salary was a right of property so protected, the significant words in Counsel for the Respondent's submission were "except in accordance with a term of the contract express or implied". He held that since in this case there existed a right to dismiss at will, ex hypothesi, there could be no unconstitutional deprivation of any right of property. The learned judge accordingly held that the Crown had the right in this case to dismiss at pleasure, that such a dismissal did take place and that consequent upon such dismissal there was no infringement of any legal right which the Respondent had under the Constitution or otherwise and said that he would dismiss the Respondent's appeal with costs.

Record  
p.72.29-42

p.72. 43-  
p.73. 14

p.73.27-36

p.74. 21 -  
p.75. 33

p.75.34-39

12. The Appellant was granted final leave to appeal to the Privy Council by the Court of Appeal of Guyana on the 2nd September, 1967.

pp. 70-71

13. The Appellant respectfully submits that this appeal ought to be allowed. It is respectfully submitted that the judgments of the learned trial

Record

judge and of Luckhoo, J.A. were correct. It is respectfully submitted that the Crown was entitled to dismiss the Respondent at will, that by the letter dated the 19th May, 1965, the Respondent was so dismissed, and that after the 19th March, 1965, she was not entitled to the salary previously paid to her as a Grade I Class I mistress. It is respectfully submitted that by the same letter of the 19th March, 1965, the Respondent was offered employment as an unqualified assistant mistress, which offer she accepted by her conduct. Since there was nothing to prevent the Crown from offering the Respondent such new employment, or her from accepting it, the reduction of her salary was perfectly regular. 10

14. In the alternative, the Appellant respectfully submits that the Crown is entitled to reduce its servants' salaries and was entitled as a matter of law to reduce the Respondent's salary.

15. The Appellant respectfully submits that his appeal should be allowed, and that the Judgment and Order of the Court of Appeal of the Supreme Court of Judicature, Guyana should be set aside, with costs, and the the judgment of Chung J. should be restored, for the following, among other 20

## R E A S O N S

1. BECAUSE the Crown was entitled to dismiss the Respondent at pleasure and did so by its letter dated the 19th March, 1965.
2. BECAUSE the Crown by its letter dated the 19th March, 1965, offered to the Respondent new employment as an unqualified assistant mistress which employment the Respondent accepted by her conduct. 30
3. BECAUSE the Crown was entitled to reduce the Respondent's salary.
4. BECAUSE of the other reasons given in the judgments of the trial judge and of Luckhoo, J.A.

No. 33 of 1967

IN THE ~~JUDICIAL COMMITTEE~~  
PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL  
OF THE SUPREME COURT OF  
JUDICATURE

GUYANA

B E T W E E N :

HER MAJESTY'S ATTORNEY GENERAL  
FOR GUYANA

Appellant

- and -

CECILE NOBREGA

Respondent

---

CASE FOR THE APPELLANT

---

CHARLES RUSSELL & CO.,  
37, Norfolk Street,  
Strand,  
London, W.C.2.