24, 1969

IN THE PRIVY COUNCIL No. 33 of 1967

ON APPEAL

FROM THE SUPREME COURT OF JUDICATURE OF GUYANA

B E T W E E N :

HER MAJESTY'S ATTORNEY GENERAL FOR GUYANA (Defendant) Appellant

- and -

CECILE NOBREGA (Plaintiff) Respondent

C A S E FOR THE RESPONDENT

Record

1. This is an appeal from a judgment of the Court of Appeal of the Supreme Court of Judicature of Guyana whereby a judgment of the former Supreme Court of British Guiana Civil Jurisdiction (Chung. J.) was reversed. p. 13

2. The learned trial Judge in an action between the Respondent as Plaintiff and the Attorney General for British Guiana as Defendant, entered judgment for the Defendant with costs. p. 17.

3. The Court of Appeal by a majority (Stoby P. and Cummings, J.A., Luckhoo J.A. dissenting) allowed the Appeal of the Plaintiff, and declared that the Plaintiff was entitled to the declarations for which her action had been brought, a declaration that she was entitled to certain salary and a declaration that the reduction of her salary was ultra vires and of no effect. The Respondent to the Plaintiff's appeal was the Attorney General for Guyana, who p. 44 l.42 p. 60 l. 9 p. 75 l.39 p. 77 p. 45

Record

now brings this Appeal. The Attorney General for British Guiana and the Attorney General for Guyana are hereinafter referred to, without distinction, as "the Defendant".

p. 9 l.1
p. 9 l.8
Ex.C p.86
Ex.D p.87
p. 9 l.20

4. The Plaintiff, a qualified teacher, when in England in October, 1964 was offered a teaching post pending the creation on the staff of the Ministry of Education of a post suitable to her attainments, and she returned to British Guiana, as it then was. With effect from 4th December, 1964 she was appointed by the Ministry as Grade 1 Class 1 mistress, seconded to the Ministry, and her appointment was approved by the Minister.

p. 9. l.29
p. 9. l.31
Ex.E p.88
Ex.B l.2
p. 84, 85

5. Whilst performing the teaching duties to which she was later assigned (and which she continued at all material times thereafter to perform) she received from the Ministry a letter dated 17th March, 1965 asking her to send (if possible by the Ministry's messenger or by return mail) her birth and academic certificate.

p. 9 l.35
Ex.F p.89

6. On the 19th March, 1965 the Plaintiff received from the Ministry a letter stating:-

> "... your appointment as a Grade 1 Class 1 teacher has been rescinded as from to-day... .....
> The effect of such rescission [sic] is that you will be paid as an unqualified assistant mistress pending the submission of the documents asked for by me. Upon receipt of these documents your status as a teacher will be determined, and a new letter of appointment issued to you".

p. 9 l.37

The Plaintiff delivered her documents to the Ministry on the same day.

p. 9 l.41
p.10 l.3,4
p. 9 l.45,46
p. 9 l.44

7. Nothing more was done by the Ministry, except that the pay tendered to but not accepted by the Plaintiff was calculated at the rate of $92 a month from 20th March, 1965 to the end of that month, instead of at the higher rate appropriate to her original appointment, $ 251 a month, at which higher rate the Plaintiff was,

Record

apparently, paid until the 19th March, 1965. p. 9 l.43

8. On the 9th April, 1965 the Plaintiff's Writ was issued, claiming a declaration that she was entitled to the higher rate of pay, and a declaration that the purported reduction of salary was ultra vires and of no effect. p. 2

9. The Plaintiff never agreed to any reduction of salary, and without interruption continued at her teaching post performing the same duties. In October, 1965, whilst her action was pending, the Plaintiff took the reduced pay, subject to her rights not being prejudiced. p. 9 l.46 p.10 l.5

10. At the trial the Defendant called no evidence and (apparently accepting that the Plaintiff's taking reduced pay without prejudice created no new relationship), he puts his case entirely on the basis that since the Crown could dismiss at will, it could arbitrarily and without dismissing continue to employ the servant at a rate unilaterally reduced, without the agreement of the servant; and that that was what the Crown had lawfully done. The Defendant did not allege or argue that the Plaintiff had been dismissed, nor that she had agreed to resume working on the new terms suggested by the Ministry, but accepted that she had done neither. p.10 l.23 p.11 l.1-22 p.38 l.1-7 p.16 l.2 p.16 l.2

11. In the Court of Appeal the Defendant eschewed the opportunity to contend that the Plaintiff had been dismissed and re-engaged. He chose to found his case solely on the contention that the Crown had a legal right unilaterally to reduce salary under contracts of service. p.38 l.3 p.38 l.6 p.39 l.2,3

12. The primary question for determination on this Appeal is, therefore, accepting that Crown servants are employed at pleasure and dismissible at will whether, short of dismissal, the Crown may unilaterally reduce contractual salary.

Record

13. It is to be observed that if the Defendant's contention be correct, and the majority of the Court of Appeal wrong, the Crown holds its servants in thrall.

14. The Plaintiff submits that the majority judgment and the order of the Court of Appeal was right and should be upheld and that the Plaintiff should be allowed her costs of this Appeal for the following, amongst other, 10

R E A S O N S

(i) BECAUSE the Crown cannot unilaterally reduce the pay of its servant without terminating the service and whilst retaining the services.

(ii) BECAUSE although the servant is employed during pleasure nevertheless he is employed under contract. 20

(iii) BECAUSE, whilst the contract may be terminated, its terms may not be fundamentally altered except by agreement.

(iv) BECAUSE the Plaintiff was not dismissed and did not agree to any reduction of salary.

(v) BECAUSE unilateral variation is unknown to law.

(vi) BECAUSE although the Crown is free to dismiss it is not free to bind its servant without the agreement of the servant. 30

(vii) BECAUSE a declaratory judgment was appropriate to the facts of the case.

(viii) BECAUSE a decision not to pay the contractual rate for the Plaintiff's

Record

service was ultra vires and void.

(ix) BECAUSE not to pay at the contractual rate effected a compulsory taking of property in violation of Article 12 of the Constitution of British Guiana.

FENTON H.W. RAMSAHOYE

KEITH McHALE

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(Plaintiff) Respondent

C A S E FOR THE RESPONDENT

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