Privy Council Appeal No. 33 of 1967

Her Majesty's Attorney General for Guyana – – – *Appellant*

v.

Cecile Nobrega – – – – – – – – *Respondent*

FROM

THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE GUYANA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 6TH OCTOBER 1969

Present at the Hearing:

LORD HODSON
VISCOUNT DILHORNE
LORD DONOVAN
LORD PEARSON
SIR GARFIELD BARWICK

[*Delivered by* VISCOUNT DILHORNE]

On 15th October 1964 a letter was sent to the respondent in London from the Ministry of Education, Co-operatives and Social Security, British Guiana, signed on behalf of the Permanent Secretary to that Ministry in the following terms:

" Dear Madam,

Mrs. Cecile Nobrega—Employment

I am directed to refer to previous correspondence on this subject and to inform you that the Ministry had wished to offer you a position on its staff. The constitutional machinery which must be involved in this process is not now functioning and, regretfully, arrangements to create this new post had to be deferred to 1965.

2. In the meantime however, the Ministry is prepared to offer you, on your return to the country, a temporary appointment as a primary school teacher at the salary of about $250.00 per month pending the creation of a suitable post.

3. Meanwhile, the Ministry will utilise your services in the field in which you have been trained."

On 4th December the respondent returned to Guyana and on 11th December 1964 the following letter was sent from the same Ministry signed on behalf of the Chief Education Officer to the Manager, Lodge Government School:

" Dear Sir

Lodge Government School—Staffing

The appointment of Mrs. Cecile Nobrega as Grade 1 Class 1 mistress is approved with effect from 4th December, 1964, subject to medical examination by a Government Medical Officer. Mrs. Nobrega will be informed later about the date of her medical examination by the Ministry of Health.

2. Details of age, qualifications etc should be entered on the attached Statement of Particulars and returned to this office as early as possible.

Salary at the rate of $251.00 p.m. in the scale $118 × 7—$195/211 × 10—251 × 7—258 × 10—$288. Mrs. Nobrega is seconded to the Ministry of Education."

Although this letter was not addressed to the respondent, in her evidence she referred to it as her letter of appointment, and she duly entered upon her duties thereunder.

On 17th March 1965 a letter was sent to the respondent by the Ministry of Education, Youth, Race Relations and Community Development, signed on behalf of the Chief Education Officer in the following terms:

" 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).

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

Two days later on 19th March a further letter was sent to her from the same Ministry again signed on behalf of the Chief Education Officer. It read as follows:

" 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 1 Class 1 teacher has been rescinded as from today, 19th March, 1965.

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."

The same day the respondent sent the required documents to the Ministry. She received no further letter after the 19th March and continued to teach; but when she went to receive her salary, she found that her payslip showed one salary of $251.00 a month up to the 19th March and thereafter another salary of $92.00 a month. She did not accept that reduction but did so later without prejudice to her rights.

On 9th April 1965 the respondent started an action by writ against the appellant. In her Statement of Claim she alleged that " the purported reduction of " her " salary and status was effected without lawful authority " and she claimed the following declarations:

(*a*) That the purported rescission of her appointment as a Grade 1 Class 1 teacher was *ultra vires* and of no effect.

(*b*) That she 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 per month.

(*c*) That the purported reduction of her salary by the Government of British Guiana from $251.00 per month in respect of such services to $92.00 or any other sum was *ultra vires* and of no effect.

In his defence the present appellant alleged that the respondent's certificates were evaluated and that on 25th March 1965 she was appointed as an unqualified assistant mistress at the Lodge Government School with effect from 20th March 1965 at a salary of $84.00 a month with two increments; and it was contended that she was not entitled in law to the declarations she claimed " in that the questions of the plaintiff's appointment and/or reduction of salary are matters which are exclusively within the discretion of the Crown ".

At the hearing no evidence was called for the appellant. There was consequently no proof of this allegation that she had been appointed an unqualified assistant teacher at the salary alleged following upon the evaluation of her certificates.

It was argued on the respondent's behalf that while the Crown could dismiss at pleasure, such dismissal must involve a dispensation with service and that there could not be a dismissal if a person continues to perform the same job.

In the Supreme Court of British Guiana Chung J. dismissed the respondent's claim. In the course of his judgment he said " Both counsel for the plaintiff and counsel for the Crown agree that there was a contract of service and 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."

It is apparent from the context and from a later passage in his judgment that Chung J. was here using " dismissal " as meaning a dispensation with service.

Chung J. cited the following passage from Professor Glanville Williams' book " Crown Proceedings ":

> " 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. . . ."

He went on to say that the letter of 19th March " clearly communicated that the plaintiff's appointment as a Grade I Class I teacher has (? had) been rescinded as from the 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."

He thus treated the letter of 19th March 1965 as terminating her appointment as a Grade I Class I teacher and as in effect offering her a new appointment as an unqualified assistant teacher. He then repeated part of the passage he had cited from Professor Glanville Williams' book and said:

> " 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."

It would appear that Chung J. accepted the passage cited from Professor Glanville Williams' book as a correct statement of the law; and if that be a correct interpretation of his judgment, then there were two distinct grounds given by him for his decision: (1) That the letter of 19th March terminated the respondent's appointment and offered her a new appointment and (2) That the Crown had the right in any event to reduce her pay.

In the Court of Appeal of the Supreme Court the Chancellor, Sir Kenneth Stoby, gave judgment in favour of allowing the respondent's appeal. He thought he had to decide whether the Crown had the right to vary a contract of service unilaterally without the consent of the Crown servant, and held that it had not. " If the Crown " he said " instead of dismissing can reduce salary there is no limit to which contractual terms can be changed ".

He said that counsel for the Crown did not contend that the Crown had dismissed the appellant and entered into a new contract: further that counsel for the Crown had specifically rejected the Court's suggestion " or at least did not adopt it " that the letter of 19th March could be treated as a dismissal. He then went on to say that it could be appreciated why counsel took this line for, he said, the course of conduct showed that there was no dismissal and no re-employment. " If " he said " she

was dismissed and not re-employed then why has she been teaching in the school and receiving a salary? If she has been re-employed then why was a letter not sent to her stating the terms of her employment and the duties expected of her?".

While one would, in view of the terms of the letter of 19th March, have expected a letter of appointment to have been sent to the respondent after her certificates had been evaluated, the omission to take that step does not establish that she was not in fact re-employed.

The reasons advanced by the Chancellor for the line taken by counsel for the Crown show that he regarded "dismissal" as meaning a dispensation with service.

Before the Board it was said on behalf of the appellant that the contention that the letter of 19th March terminated the respondent's appointment while offering her employment as an unqualified assistant teacher had not been abandoned.

Cummings J. A. was also in favour of allowing the appeal. He too was of the opinion that the word "dismissal" in relation to the Crown's right to dismiss at pleasure connoted a dispensation with services and he inferred from Chung J's judgment that counsel for the Crown had conceded that the Crown had not exercised its right to dismiss, using that word in that sense. He too held that the Crown could not unilaterally vary a contract of service.

Luckhoo J. A., on the other hand, thought that the appeal should be dismissed. He said that three questions fell to be considered (1) Does the Crown have the right to dismiss the appellant at pleasure (2) Was she in fact dismissed and (3) Did she suffer in any way any infringement of any legal rights. His answer to the first two questions was in the affirmative and to the third in the negative. The third question was not raised on the hearing of the appeal before their Lordships.

With regard to the second question he assumed that a contract of service with the appellant did exist. He said that such a contract could only be found in the letter of 11th December 1964 which contained the terms which the appellant accepted. "Put shortly, it could only have been: on the part of the promisor, 'I will employ you as a Grade 1 Class 1 teacher at a certain salary, on a certain scale': on the part of the promisee 'I will serve you as such on those terms and conditions': this (of course) subject to the promisor's right at law to dismiss at pleasure."

He then said "If for any reason this appointment should cease to subsist, the contract must necessarily cease to exist" and also that the right to rescind the appointment was a logical consequence of the Crown's right to dismiss at will.

In the opinion of their Lordships Luckhoo J. A. was right. There is not in their Lordships' view any ambiguity or doubt as to the meaning to be given to the first paragraph of the letter of 19th March. By that paragraph her appointment as a Grade 1 Class 1 teacher was rescinded as from 19th March. The appointment she had been given was terminated. The respondent is not therefore entitled to the declarations she has claimed. The rescission of her appointment was not *ultra vires* and of no effect and from 19th March she ceased to be entitled to a salary of $251.00 a month.

The second paragraph of that letter was not correctly expressed. The effect of the rescission was not that she would be paid as an unqualified assistant teacher. Its effect was to terminate her appointment and her right to the salary which went with that appointment. Misstatement of the effect of paragraph one of the letter does not, however, in any way alter or affect the clear meaning of that paragraph.

The respondent can have been left in no doubt by that letter that her appointment as a Grade 1 Class 1 teacher had come to an end and that she had ceased to be entitled to the salary which went with that

appointment. The second paragraph makes it clear that she could continue as an unqualified assistant teacher pending the evaluation of her documents. She could have refused to do so but she did not.

In this case in view of the clear terms of the first paragraph of the letter of 19th March 1965 no question arises as to the right of the Crown to reduce or vary the terms of a contract of service unilaterally.

For these reasons their Lordships will humbly advise Her Majesty that the appeal should be allowed, the order of the Court of Appeal set aside and the order of the Supreme Court restored. The respondent must pay the costs of proceedings in both Courts below and of this appeal.

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In the Privy Council

HER MAJESTY'S
ATTORNEY GENERAL
FOR GUYANA

v.

CECILE NOBREGA

DELIVERED BY
VISCOUNT DILHORNE

Printed by HER MAJESTY'S STATIONERY OFFICE
1969