

~~GLT. 62~~

4/1963

No. 50 of 1961

IN THE PRIVY COUNCIL

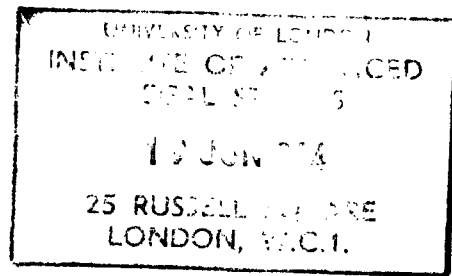
O N A P P E A L
FROM THE SUPREME COURT OF CEYLON

B E T W E E N :-

SIDNEY GODFREY DE ZOYSA ... Appellant

- and -

- 10 (1) THE PUBLIC SERVICE COMMISSION,
 (2) SIR HERBERT ERIC JANSZ,
 (3) JOSEPH NALLIAH ARUMUGAM,
 (4) HECTOR SENARATH RAJAKARUNA
 BANDA KOBBEKADUWA (substituted
 for GEORGE REGINALD DE SILVA,
 deceased)
 and
 (5) GINIGE CYRIL THAINE ARTHUR
 DE SILVA Respondents



74070

CASE FOR THE APPELLANT

Record

20 1. This is an appeal from a judgment, dated the
 15th November, 1960, of the Supreme Court of Ceylon
 (Fernando, J.) dismissing the Appellant's Petition
 for a mandate in the nature of a writ of
 certiorari, quashing an order of the first
 Respondents that the Appellant retire compulsorily
 from the Ceylon Police, and a mandate in the nature
 of a writ of mandamus, directing the Respondents to
 recognise the Appellant as an officer of the Ceylon
 Police.

pp.184-192

30 2. The second and third Respondents and George
 Reginald de Silva were the members of the Public
 Service Commission when the order dismissing the
 Appellant from the Ceylon Police was made. George
 Reginald de Silva died on the 28th July, 1960. The

p.179,
11.36-43

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fourth Respondent succeeded him as a member of the Public Service Commission, and was substituted for him as a party to these proceedings by an order made by the Supreme Court on the 2nd September, 1960. The fifth Respondent is the Permanent Secretary of the Ministry of Justice, which is responsible for the Ceylon Police.

3. The following provisions are relevant to this appeal :

CEYLON (STATE COUNCIL) ORDER IN COUNCIL, 1931 10
(S.R. & O., 1931, p.1448)

86. (1) The appointment, promotion, transfer, dismissal, and disciplinary control of public officers shall be vested in the Governor, subject to any Instructions given under His Majesty's Sign Manual and Signet or through the Secretary of State....

x x x x

89. (1) There shall be a Public Services Commission to advise the Governor in the exercise of the powers conferred upon him by Article 86..... 20

(2)

(3) The Governor may by regulation subject to the approval of the Secretary of State prescribe the duties of and the procedure to be followed by the Commission in the exercise of their duties and the number which shall form a quorum.

(In pursuance of the power granted by art. 89(3) of this Order, the Governor made the Public Services Regulations.) 30

CEYLON (CONSTITUTION) ORDER IN COUNCIL, 1946
(S.R. & O., 1946, vol. I, p.2248)

56. Every person who, otherwise than in the course of his duty, directly or indirectly, by himself or by any other person, in any manner whatsoever, influences or attempts to influence any decision of the Judicial Service Commission or of any member thereof shall be guilty of an 40

offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment for a term not exceeding one year or to both such fine and such imprisonment:

Provided that nothing in this Section shall prohibit any person from giving a certificate or testimonial to any applicant or candidate for any judicial office.

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PART VII

The Public Service

57. Save as otherwise provided in this Order, every person holding office under the Crown in respect of the Government of the Island shall hold office during His Majesty's pleasure.

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58. (1) There shall be a Public Service Commission which shall consist of three persons, appointed by the Governor-General, one at least of whom shall be a person who has not, at any time during the period of five years immediately preceding, held any public office or judicial office. The Governor-General shall nominate one of the members of the Commission to be the Chairman.

(2) No person shall be appointed as, or shall remain, a member of the Public Service Commission if he is a Senator or a Member of Parliament.

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(3) Every person who, immediately before his appointment as a member of the Public Service Commission, is a public officer shall, when such appointment takes effect, cease to hold any paid office previously held by him as a servant of the Crown in respect of the Government of the Island, and shall accordingly cease to be a public officer for the purposes of this Order; and he shall be ineligible for further appointment as a public officer:

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Provided that any such person shall, until he ceases to be a member of the Public Service Commission or, while continuing to be such a member, attains the age at which he would, if he were a public officer, be required to retire,

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be deemed to hold a pensionable office in the service of the Crown in respect of the Government of the Island for the purposes of any written law relating to the grant of pensions, gratuities or other allowances in respect of such services.

x x x x

60. (1) The appointment, transfer, dismissal and disciplinary control of public officers is hereby vested in the Public Service Commission: 10

Provided that appointments and transfers to the office of Attorney-General shall be made by the Governor-General.

x x x x

62. The provisions of Section 56 of this Order shall apply in relation to the Public Service Commission as though the reference therein to the Judicial Service Commission were a reference to the Public Service Commission and the reference to judicial office were a reference to public office. 20

x x x x

87. (1) The Governor may, at any time before the first meeting of the House of Representatives under this Order, make such regulations as appear to him to be necessary or expedient, in consequence of the provisions of this Order, for modifying, adding to or adapting the provisions of any general order, financial regulation, public service regulation or other administrative regulation or order, or otherwise for bringing the provisions of any such administrative regulation or order into accord with the provisions of this Order or for giving effect thereto. 30

(2) Every regulation made under subsection (1) of this Section shall have effect until it is amended, revoked or replaced by the appropriate Minister or authority under this Order. 40

PUBLIC SERVICE COMMISSION RULES

(These Rules are the Regulations made under the Order in Council of 1931, with modifications, additions and adaptations made by the Governor under art. 87 of the Order in Council of 1946).

10 3. Permanent Secretaries to the Ministries and Heads of Departments are forbidden to forward to the Public Service Commission the views of their Ministers or of Senators, Members of Parliament or Unions or Associations of Public Officers on any matter on which the Public Service Commission has to come to a decision. Any such communication will be tantamount to an attempt to influence the decision of the Public Service Commission by a person not competent to do so under the Constitution. Communications from Permanent Secretaries and Heads of Departments, conveying decisions of Government policy, do not fall within this category. A Permanent Secretary or Head of a Department is at liberty to express his own individual views on any matter on which he seeks the decision of the Public Service Commission. Any communications received direct by the Public Service Commission from persons not entitled to address the Public Service Commission on the subject matter of the communication will not be acknowledged.

x x x x

30 61. If a Head of a Department considers that an officer in his Department, the commencing salary of whose post is Rs.4,080 per annum or above should be required to retire under the provisions of Rule 2 of the Rules made under Section 2 of the Public and Judicial Officers (Retirement) Ordinance, he will make a recommendation accordingly to the Permanent Secretary to the Ministry and inform the officer concerned that it is proposed to retire him. The Permanent Secretary will make his recommendation to the Public Service Commission forwarding the statement of the officer, if any. The Commission will decide whether the officer should be retired.

40 62. If the Public Service Commission decides that an officer should be required to retire he

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will be given not less than three months' notice by the Secretary to the Commission.

63. A Head of a Department is authorized to retire in the public interest any officer in his department, the commencing salary of whose post is less than Rs.4,080 per annum, with effect from the date on which such officer shall reach the age of optional retirement or from a date thereafter. The cases of such officers in the Combined Services will be dealt with by the Deputy Secretary to the Treasury. The provisions of Rule 2 of the Rules made under Section 2 of the Public and Judicial Officers (Retirement) Ordinance will be observed. 10

64. The question of compulsorily retiring an officer who has been permitted to remain in service after attaining the age of optional retirement may be taken up at any time before he reaches the age of sixty.

65. The Secretary to the Treasury will make recommendations to the Public Service Commission, where necessary, in regard to the compulsory retirement of officers of the Civil Service. In the case of officers in the other Combined Services, holding posts the commencing salaries of which are Rs.4,080 per annum or above, the recommendations will be made by the Deputy Secretary to the Treasury. 20

CEYLON GOVERNMENT MANUAL OF PROCEDURE

CHAPTER III 30

MISCELLANEOUS REGULATIONS RELATING TO THE PUBLIC SERVICES

(To be read with the Financial Regulations, Public Service Commission Rules and the Judicial Service Regulations).

x x x x

186. Pensionable officers in the Public Service shall be permitted to retire, if they so desire, on reaching the age of optional retirement (55 years). They may be permitted to continue in service after reaching this age, subject to the provisions of Public Service 40

Commission Rules 62 to 65. They shall be automatically retired on reaching the age of 60, unless they have received permission beforehand in terms of Public Service Commission Rules 67 or 68 to remain in service.

10 187. (i) Public Officers are required to give at least six months' notice to the Heads of their Departments before they reach the age of optional retirement (55 years) stating whether or not they desire to retire on reaching such age. A Head of Department will give similar notice to the Permanent Secretary to the Ministry before he reaches the age of optional retirement. In the case of officers in the Civil Service notice will be given to the Secretary to the Treasury and in the case of officers in the other Combined Services, to the Deputy Secretary to the Treasury, through the Head of Department and the Permanent Secretary to the Ministry.

20 (ii) All officers who are permitted to remain in service after the age of 55 years are required to give a written undertaking that they give at least three months' notice to the Head of the Department, the Permanent Secretary to the Ministry, Secretary to the Treasury, or Deputy Secretary to the Treasury, as the case may be, before they ultimately retire from the service or are granted leave preparatory to retirement whichever is earlier.

30 188. (i) When it is possible to effect retrenchment by retiring an officer who has attained the age of 55, by abolishing his post or another post lower down in the scale, the officer should be compulsorily retired unless he is exceptionally efficient and it is in the public interest to retain him.

40 (ii) If it is not possible to retrench a post by retiring an officer who has attained the age of 55, he should be compulsorily retired only if his efficiency is definitely below normal.

(iii) An officer whom it is proposed to retire compulsorily on the above principles should not be allowed an extension on compassionate grounds, e.g., merely to allow him to qualify for a full pension.

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(iv) An officer who is compulsorily retired from service after reaching the age of 55 should in ordinary circumstances be given three months' notice of the date of retirement.

- pp. 5-13 4. On the 31st May 1960, the Appellant presented to the Supreme Court of Ceylon a Petition claiming :
1. A mandate in the nature of a writ of certiorari quashing an order purportedly made by the first Respondents on the 27th of November, 1959 that the Appellant be retired from the public service with effect from the 1st March, 1960; 10
 2. A mandate in the nature of a writ of mandamus directing the Respondents to recognize the Appellant as an officer of the Ceylon Police and not to hinder or impede him from continuing to serve as an officer of the Ceylon Police.
- pp.165-172 This Petition was supported by an affidavit sworn by the Appellant. Throughout the proceedings, no evidence was filed or given by the Respondents. The Appellant's evidence was thus uncontradicted, and the facts established by it are set out in paragraphs 5 to 12 of this Case. 20
- p.166, 11.3-15 5. The Appellant was appointed a probationary Assistant Superintendent in the Ceylon Police on the 7th of December, 1931. Thereafter he served continuously in the Ceylon Police until the making of the order out of which these proceedings arise. On the 29th of January, 1955 he was appointed to the rank of Deputy Inspector-General of Police, and his salary in November 1959 was Rs.19,500 per annum. 30
- p.167, 1.38- p.168, 1.7 He attained the age of 50, which is the optional retiring age for officers of the Ceylon Police, on the 15th of January, 1959. Previously, he had been granted an extension of service as Deputy Inspector-General for one year from the 15th of January, 1959. p.52
- p.53 By a letter on the 20th of October, 1959 signed by the fifth Respondent, the Appellant was granted a further extension of service for one year from the 15th of January, 1960. 40
- p.169, 11.16-33 6. In the course of the investigation of the murder of the Prime Minister of Ceylon, Mr. Bandaranaike, the Appellant prepared a statement for release to the press. This statement was amended by

the Inspector-General of Police, then approved by the Minister of Justice and the fifth Respondent and then released to the press. It appeared in the evening newspapers of the 2nd of November, 1959.

10 7. About the 9th November, 1959, certain members of Parliament gave notice of a motion in the House of Representatives to censure the Minister of Justice for permitting the Appellant to make this statement to the press. This motion was due to be debated in the House on the 27th of November, 1959. p.169, 11.37-45

20 8. On the 24th November, 1959 the Minister of Justice sent for the Appellant, and asked him to go on leave as an alternative to retirement, in order to save the Minister from the embarrassment of this vote of censure. The Appellant refused. The Minister sent for the Appellant again on the 25th November, 1959, and told him, in the presence of the Inspector-General of Police, that he, the Minister, intended to retire the Appellant compulsorily. Thereupon the Appellant asked the Minister to go with him to see the Prime Minister, Mr. Dahanayake. After discussion, the Prime Minister said there was no reason why the Appellant should be removed from office, and the Minister of Justice agreed. p.169, 1.46- p.170, 1.2 p.170, 11.3-11

30 9. According to a report published in the "Ceylon Observer" in the evening of the 26th November, 1959, the day before the motion to censure the Minister of Justice was due to be debated in the House of Representatives, 25 of the 43 members of that House supporting the Government handed a memorandum to the Prime Minister on the 25th November, 1959 dissociating themselves from the statement which the Appellant had issued to the press. During the evening of the 26th November, 1959 the Minister of Justice and the Inspector-General of Police summoned the Appellant to the House of Parliament. The Minister of Justice then told the Appellant that a meeting of the members of Parliament supporting the Government was to be held in a few minutes' time; if he (the Minister) did not inform that meeting that the Appellant was to be removed from active duty that night, the Minister would be obliged to resign and the Appellant would be compulsorily retired. The Minister of Agriculture, who was also present, suggested that the Appellant should be seconded for a month or so to some other department, p.170, 11.12-22; p.160 p.170, 11.23-40

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in order to appease the Members of Parliament. It was finally agreed that the Appellant should take nine days' leave from the 27th of November, 1959. He was due to leave for an International Police Conference in Paris on the 5th of December, 1959. The Appellant applied to the Inspector-General on the spot for this nine days' leave, which he was granted.

p.170, 11.41-45

10. After this meeting between the Appellant, the Ministers of Justice and Agriculture and the Inspector-General of Police, the meeting of the Members of Parliament supporting the Government was held. According to a report published in the "Ceylon Daily News" the next morning, the 27th November, 1959, the members decided at that meeting unanimously that the Minister of Justice should take steps "he properly can" by 10 a.m. on the 27th November "to carry out the views of the Parliamentary Group in regard to the retirement from service of" the Appellant. The members then went on to decide that they would all vote against the motion to censure the Minister of Justice.

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p.161

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p.171, 11.6-10; p.162

11. On the 26th November, 1959, the Appellant had sent a letter to the second Respondent. In this letter he said that he apprehended that the Minister of Justice intended to remove him forcibly from office by the measure of compulsory retirement, for personal and political reasons. The Appellant asked for an opportunity of appearing personally before the Commission. At 9 a.m. on the 27th of November 1959, the Appellant, having reason to believe that the Commission was about to meet in order to carry out the wishes of the Government Parliamentary Group, addressed another letter to the second Respondent, asking that no action be taken to retire him until he had had an opportunity of making further representations and all circumstances had been carefully examined.

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p.171, 11.10-15; p.164

p.171, 11.1-5

12. On the 27th of November, 1959, before 10 a.m., the Appellant was informed that the first Respondents had met that morning and made an order that he should retire from the public service on the 1st of March 1960, and had authorised the Inspector-General of Police to place him on leave immediately. The Secretary of the first Respondents wrote a letter on the 27th of November, 1959 to the Appellant giving him this information.

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p.15

13. On this evidence, the Petition came before Fernando, J. on the 17th, 18th, 20th and 21st of October, 1960. The learned Judge delivered his judgment on the 15th of November, 1960. He said it had been argued that the Court was entitled in appropriate circumstances to quash by certiorari an order made in breach of an enactment, having the force of law, regulating the procedure of the body making the order. The impugned order of the first Respondents was admittedly not preceded by the steps required by rules 60-63 of the Public Service Commission Rules, and it was argued that those Rules had the force of law. The principal question, in the learned Judge's view, was whether those Rules did have the force of law. He traced the history of the Rules from the Order in Council of 1931 and the regulations made under that Order. Article 87 of the Order in Council of 1946 did not, the learned Judge said, expressly provide that regulations modified and adapted under it should have the force of law. Counsel had argued, however, that the regulations made in 1931 had the force of law under the Order in Council of 1931, and retained it when adapted and modified under the Order in Council of 1946. The learned Judge considered that the regulations made in 1931 were "not law and were only directions and instructions which public officers were bound to follow" on pain of disciplinary action. Fernando, J. went on to refer to certain cases decided in India under the Government of India Act, 1919 and rules made under that Act. He held that the regulations made in Ceylon in 1931 were not a mandatory enactment, and were not converted into such an enactment by their modification and adaptation in 1947. He therefore went on to hold that the Public Service Commission Rules were not a mandatory enactment qualifying the right of dismissal under Section 57 of the Constitution. In view of this conclusion, he said, it was scarcely necessary to consider whether, if an officer holding office during pleasure were compulsorily retired without first being heard, the Court was entitled to quash the order of retirement; but he did not consider that the proposition was tenable. The learned Judge concluded that the Appellant appeared to have good ground for believing that in his case the Rules governing retirement had been used for a purpose which they had not been intended to serve and in a manner not contemplated by the Public Service Commission Rules. He therefore dismissed the application without any order for costs.

pp.184-192
p.186, 1.2-
p.187, 1.3

p.187, 1.4-
p.188, 1.22

p.188, 1.23-
p.189, 1.19

pp.189-191

p.191, 11.45-
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p.192, 11.1-11

p.192, 11.12-
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14. The Appellant respectfully submits that the powers of the Public Service Commission under art. 60 of the Ceylon (Constitution) Order in Council, 1946 and rule 61 of the Public Service Commission Rules is a judicial or quasi-judicial power. In exercising that power the Commission is bound to act judicially. The failure of the Commission to give the Appellant an opportunity of appearing before them before they made the order of the 27th November, 1959 constituted a failure to act judicially and a breach of the requirements of natural justice. The Supreme Court ought, therefore, in the Respondent's submission, to have granted him a mandate quashing that order. 10

15. The Appellant respectfully submits that no valid order for his retirement was ever made. By art. 60 of the Ceylon (Constitution) Order in Council, 1946, the dismissal of public officers is vested in the first Respondents. It is the duty of the first Respondents, as appears from arts. 56 and 62 of that Order in Council and rule 3 of the Public Service Commission Rules, themselves to consider and decide upon all matters entrusted to their decision, without any interference or pressure from the legislative branch of the Government. The evidence given by the Appellant, which was uncontradicted, shewed that the decision that the Appellant should retire was that of the members of the House of Representatives who attended the meeting held in the evening of the 26th November, 1959. The first Respondents never considered the Appellant's case, or made any decision of their own upon it. They simply capitulated to influence illegally exerted by these members and agreed to implement the members' decision. In these circumstances there was, in the Appellant's submission, no lawful or effective order for his retirement. 20 30

16. The Appellant respectfully submits that the first Respondents have power to terminate the service of a public officer only when acting in accordance with the Rules prescribed in pursuance of the Orders in Council of 1931 and 1946. In the present case, the first Respondents did not act in accordance with Rule 61 of the Public Service Commission Rules. No recommendation that the Appellant be required to retire was made by the Head of the Appellant's Department. The Head of the Appellant's Department never informed the Appellant that it was proposed to 40

retire him. Consequently the order purportedly made by the first Respondents was ultra vires and void.

17. The Appellant respectfully submits that the judgment of the Supreme Court of Ceylon was wrong and ought to be reversed, and this appeal ought to be allowed, for the following (amongst other)

R E A S O N S

1. BECAUSE the first Respondents were under a duty to act judicially and failed to do so:
- 10 2. BECAUSE the procedure of the first Respondents was contrary both to natural justice and to the prescribed Rules:
3. BECAUSE the first Respondents neither considered nor decided whether the Appellant ought to be retired:
4. BECAUSE there was no valid order that the Appellant should retire:
5. BECAUSE the pretended order of the first Respondents ought to have been quashed.

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E. F. N. GRATIAEN

J. G. Le QUESNE

IN THE PRIVY COUNCIL

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SILVA, deceased)
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ARTHUR DE SILVA ... Respondents

CASE FOR THE APPELLANT

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