

Michael Robert Eddy Norton

Appellant

v.

The Public Service Commission

Respondent

FROM

THE SUPREME COURT OF MAURITIUS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 15TH DECEMBER 1987

Present at the Hearing:

LORD BRIDGE OF HARWICH

LORD ROSKILL

LORD GRIFFITHS

LORD ACKNER

SIR JOHN STEPHENSON

[Delivered by Lord Ackner]

On 19th February 1980, the Secretary to the Cabinet informed the appellant, a Principal Assistant Secretary at the Ministry of Works of Mauritius, that disciplinary proceedings were being initiated against him under regulation 38 of the Public Service Commission Regulations 1967 on certain charges, to which the appellant subsequently submitted his replies. In due course the presiding magistrate of the Industrial Court was appointed to inquire into the charges and he heard evidence, including that of the appellant.

On 10th April 1981 a letter was written by the Secretary to the Cabinet informing the appellant that the Commission had considered the report of the magistrate. The letter then stated:-

"... the Commission has considered the punishment to be inflicted upon you and has decided in exercise of the power vested in it by Section 89 of the Constitution and in accordance with the provisions of sub-paragraph 1(h) of regulation 41 of the Public Service Commission Regulations, 1967, that you be fined a sum representing seven days' pay ..."

On 27th May 1981, when the appellant called at the Finance Branch of the Ministry of Works to draw his salary for the month of May, he noticed that the sum shown on the pay sheet was short of about Rs.1,500. He refused to sign the pay sheet. A second pay sheet was accordingly prepared re-instating the deduction and the full amount of the appellant's pay normally due to him was remitted. On 2nd June 1981 the Permanent Secretary to the Ministry of Works wrote to the appellant, informing him that the fine had been imposed and requiring him to pay the amount within 21 days of the date of the letter. On 19th June 1981 the appellant applied to the Supreme Court of Mauritius for an Order of Certiorari to quash the decision, namely, the infliction of the fine, as being contrary to the Constitution.

The Public Service Commission then took a preliminary procedural objection, but this was overruled by the Supreme Court on 8th February 1983. On 23rd May 1985, the Supreme Court of Mauritius (Moollan C.J., Glover S.P.J., Ahnee J. dissenting) dismissed the application.

The issue. It is common ground that in Mauritius no private employer may impose a fine upon his employee. This is in no way surprising. In England, the Truck Acts dating from about 1464 were designed to ensure that workmen received the entire amount of their wages in the actual current coin of the Realm, and section 1 of the Truck Act 1896 made illegal a contract which made payment to the employer by the workman of any "fine" except in very special circumstances. The imposition of the "fine" was restricted, *inter alia*, to some act or omission which caused or was likely to cause damage or loss to the employer. Since 1st January 1987 the Truck Acts have ceased to be in effect, having been repealed by the Wages Act 1986, which makes more detailed provision with regard to permissible deductions.

Their Lordships understand that since July 1978 French law prohibits any form of "amende". Indeed, it appears from the majority judgment that the Mauritian Labour Act 1975 banned fines on labourers employed by the Government thereby, to that limited extent, equating the position with that in the private sector.

Thus the short issue in this appeal is whether the Commission had power to inflict a fine upon the appellant, a senior official in one of its Ministries.

The Constitution. Section 89 of the Constitution which provides for the appointment of public officers, reads as follows:-

"89(1) Subject to this Constitution, power to appoint persons to hold or act in any offices in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Public Service Commission."

Thus the power of the Public Service Commission, "to exercise disciplinary control" over public officers is derived from and subject to the terms of the Constitution.

Section 8 of the Constitution is entitled "Protection from deprivation of property". It appears in Chapter 2 of the Constitution which is headed "Protection of fundamental rights and freedoms of the individual". It provides in sub-section (1) that "No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired," except as provided in the sub-section.

Section 8(4), in so far as it is material to this appeal, is in the following terms:-

"(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of sub-section (1)-

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of property -

(ii) by way of penalty for breach of the law or forfeiture in consequence of a breach of the law ...

(iv) in the execution of judgments or orders of courts;"

Section 118 of the Constitution is entitled "Performance of functions of Commissions and tribunals". Sub-section (1) provides:-

"(1) Any Commission established by this Constitution may by regulations make provisions for regulating and facilitating the performance by the Commission of its functions under this Constitution."

The Regulations. Pursuant to this power, regulations, entitled Public Service Commission Regulations, were made on 12th August 1967. Part IV of the Regulations is headed "Discipline". Regulation 30, the first of the regulations appearing

under this heading, provides that the Commission shall not exercise its powers in connection with, *inter alia*, the disciplinary punishment of any officer in the public service except in accordance with the regulations or such other regulations as may be made by the Commission. Regulation 41 needs to be set out in full:-

"41(1) The following punishments may be inflicted on any public officer as a result of proceedings under this Part -

- (a) dismissal;
- (b) reduction in rank or seniority;
- (c) stoppage of increment;
- (d) deferment of increment;
- (e) suspension from work without pay for a period not less than one day and not more than 14 days;
- (f) severe reprimand;
- (g) reprimand;
- (h) fine;
- (i) payment of the cost or part of the cost of any loss or breakage or damage of any kind caused by default or negligence.

(2) Nothing in this regulation shall limit the powers conferred by these regulations to require a public officer to retire from the service on the grounds of public interest.

(3) No punishment shall be inflicted on any public officer which would be contrary to any enactment."

The appellant's submissions are simple and, in their Lordships' opinion, correct. The powers of the Commission are derived, not from the regulations, but from the Constitution itself. The Public Service Commission has no more power than that conferred upon it by the Constitution. As was pointed out by Ahnee J. in his dissenting judgment, whatever in the past, when Mauritius was a British Colony, may have been the powers of the then Governor over Her Majesty's civil servants, cannot be of any assistance in defining the powers conferred upon the Public Service Commission by the Constitution. Sections 8(1) and 8(4) of the Constitution make it clear that there is no power to fine, unless there exists a law which gives power to impose a fine for a breach of that law. Before such a fine can be enforced, the breach of that law has to be established in the courts. Accordingly it must follow that the power given to the Public Service Commission to "exercise disciplinary control" does not include the power to inflict a fine. In the result, regulation 41(1), insofar as it provides for punishment by the infliction of a "fine", is *ultra vires* the Public Service Commission.

Accordingly, their Lordships will humbly advise Her Majesty that the appeal ought to be allowed and that the writ of Certiorari should issue. The appellant is entitled to his costs both before the Supreme Court and before their Lordships' Board.

