

(1910) 02 CAL CK 0007**Calcutta High Court****Case No:** None

King

APPELLANT

Vs

Secretary of State for India in
Council

RESPONDENT

Date of Decision: Feb. 2, 1910**Acts Referred:**

- Government of India Act, 1915 - Section 75

Citation: 9 Ind. Cas. 858**Hon'ble Judges:** Fletcher, J**Bench:** Single Bench**Judgement**

Fletcher, J.

This is a hopeless and frivolous action.

2. The plaintiff, Mr. Arthur John King, was employed by the Government of India in a tea garden in Port Blair, in the Andaman Islands. The plaintiff in his plaint alleges that in the month of February, 1887, Mr. A.P. Macdonnel, the then Officiating Secretary to the Government of India, wrote to the then Superintendent of Port Blair setting out the terms on which the employment of the plaintiff was sanctioned by the Secretary of State, viz., that after an engagement of three years the plaintiff's services should be retained for an undefined period, on a salary of Rs. 350 a month increasing by annual increments together with a commission of five per cent, on the net profits of the tea garden. There were certain other allowances which were to be made to the plaintiff and he was to be entitled to six calendar months notice if his engagement was to be terminated. The plaintiff further alleges that on the 4th July, 1887, the Government of India decided that the grant of leave to the plaintiff should be regulated by the Rules of the Civil Leave Code applicable to uncovenanted officers of the Government, and such decision was communicated to the plaintiff by and on behalf of the Government of India and was accepted and agreed to by the plaintiff, and thereupon by mutual agreement the Regulations of the Civil Leave

Code became a part of the contract between the parties.

3. The plaintiff also alleges that by mutual consent and agreement the terms of his employment were further varied so that he should be entitled to receive one year's notice instead of six months to terminate his employment, and that this and other changes in the terms of his employment were duly sanctioned by the then Secretary of State and accepted by the plaintiff.

4. On the 17th February, 1905, the then Superintendent of Port Blair wrote to the plaintiff and asked if he was prepared to dispense with the one year's notice to which he was entitled under the terms of his covenant and if he was prepared to leave, the Government would pay him one year's salary and a bonus of ♣ 200 and he was informed that in any case he must accept that letter as a notice of the termination of his employment.

5. On the 18th July, 1905, the Government of India closed this tea garden and paid to the plaintiff his salary up to the 17th February, 1906, and he also received from the Government the bonus of ♣ 200 or Rs. 3,000.

6. The plaintiff's case is that he is entitled to damages, one year's salary from the 18th July 1905, and to the commission to which he was entitled under the terms of his contract.

7. Now, the first question is, what is the nature of the plaintiff's employment?

8. That he was employed under the Crown there is now doubt.

9. It is a general rule and a well-established principle that the Crown in the absence of statutory provision can dismiss any servant in its Civil or Military employ.

10. It is said that it does not apply to the persons employed under the Government of India who are engaged in certain commercial undertakings of the Government. Now, the only right which the plaintiff can have against the Crown, which is not the ordinary right of a servant of the Crown, is in the event if he had a different right against the East India Company.

11. Section 65 of the statute, (21 and 22 Vict, Chap. 106), gives certain persons a right of action against the Secretary of State. Now, what was the position of a servant of the East India Company prior to the time when British India was taken over by the British Crown?

12. It appears to me that the position of a servant of the Company was exactly the same as the position of a servant of the Crown. It is enacted by Section 75 of 3 and 4 Will. IV, Chapter 85 that "Nothing in this Act shall take away the power of the said Court of Directors to remove or dismiss any of the officers or servants of the said Company but that the said Court shall and may at all times have full liberty to remove or dismiss any of such officers or servants at their will and pleasure."

13. The Company, therefore, had exactly the same right of dismissing servants as the Crown has, but even in this case, if the plaintiff had a right of action against the Crown, I should hold that his suit could not succeed. It seems to me wholly wrong to say that the servant, who had received his notice of dismissal and got his wages for the remainder of the term covered by the notice, could maintain an action for wrongful dismissal. It seems to involve the anomaly that the person dismissed in the eleventh month of the notice would receive a larger amount than if he was dismissed in the first month. I think from the plaintiff's own statements in the plaint that the plaintiff has been treated by the Government with great consideration.

14. It only remains for me to say that the plaint discloses no cause of action against the Secretary of State and the suit must be dismissed with costs on scale No. 2.