

(1871) 06 CAL CK 0020

Calcutta High Court

Case No: None

P.F. Hughes

APPELLANT

Vs

The Secretary of State
for India in Council

RESPONDENT

Date of Decision: June 26, 1871

Judgement

Phear, J.

The question which is now immediately before me in this suit is, what were the conditions of Mr. Hughes' service under the Government of India, as regards the duration of that service, and has the Government put an end to that service in breach of those conditions? If the Government has done so, then I may say, in reference to a portion of the learned Advocate-General's argument, I have no doubt that a suit lies against the Government to make it answerable for the breach of the terms of a contract of service, as well as for the breach of the terms of any other contract it may enter into; and that the Government itself contemplates the contingency of such a suit happening is evident from Chapter IV of the Code of Regulations, section I, paragraph 32 (reads)¹. It is perhaps somewhat unfortunate that in a case where an issue of this kind is raised before the Court for its consideration, the plaintiff has not had the advantage of professional assistance; and I have in consequence felt more difficulty in the matter than probably would otherwise have been the case. I have no previous decisions to guide me. The learned Advocate-General has referred me to several English cases, among others to *Dawkins v. Lord Paulet* 5 L.R., Q.B., 94; but it appears to me they are of little service in the present matter, because they all turn on the question of the responsibility of a superior officer to an inferior for any act which may have been committed by him in alleged abuse of his authority to the detriment of the latter. Those cases do not help me to determine what in England is the customary duration of service in cases of the present kind. Generally speaking, public service may, I suppose, be classed under three forms: first, service for a term of years specified either expressly or by implication; secondly, service during the pleasure of the parties; and thirdly, a form which is, I imagine, now very unusual--service during good behaviour. This last is almost necessarily confined to the discharge of

permanent officers, for it amounts in its nature to" a service for life. Mr. Hughes" service clearly does not fall under this class; and as far as I can judge from the Code of Regulations, which, as Mr. Hughes admits, embodies all the essential terms of his service, and from his own statements, there has not been at any time between him and the Government any express specification of a period for which he is to serve. The hiring was, therefore, as far as I can make out, indefinite in that respect. In England, a general or indefinite hiring for personal service is commonly understood to constitute a contract of service for one year; but that is a matter of fact, and it can there be shown by evidence, if the case be so, that a given indefinite hiring is not really for a year but for a term, say less than one year. In this country there can, I think, be no doubt that an indefinite hiring does not mean a hiring for one year. It would perhaps seem more likely a priori that an indefinite hiring would be considered by the parties to mean a hiring for one month. I have no evidence, however, before me to show that a general understanding of this nature obtains, and I do not find any indication in the Code of Regulations of the Public Works Department, that either the Government on one side, or its servants in that department on the other, consider that an indefinite hiring is a hiring for one month. The mere payment of wages monthly is not enough to show that this was a monthly hiring in the contemplation of the parties. On the whole then, after giving the best consideration I can to the question, I think this service is one terminable at the pleasure of the parties, under certain conditions or qualifications which I will now consider. On Friday last Mr. Hughes handed in to the Court a memorandum of agreement in the nature of a security bond, by the terms of which, so far as they go, he at any rate is bound to the Government during his service. And one of the terms of that agreement is that he will not leave his employment without giving six months" notice of his intention to do so; so that on Mr. Hughes" side, although he can, I think, put an end to the service at his pleasure, it is with this qualification, that he must give six months" notice before doing so. The ordinary contract of menial service in England effected by a general hiring,--i.e., of service for a year certain,--may be terminated on the side of the master either by paying one month"s salary or by giving one month"s notice, and on the part of the servant by giving one month"s notice. Mr. Hughes seemed to have this state of relations in his mind when he was arguing his case the other day, and, as I understood him, he wished me to deduce from it this inference, that in the kind of service now in question the Government cannot rightly put an end to the hiring without either giving a month"s notice or paying a month"s salary. But I do not think the analogy holds. The English rule with regard to the hiring of servants rests entirely on custom; and in order to apply the same rule here I must be satisfied that there is a similar custom here. But I have before me no evidence of any such custom, and I may say I believe it would be impossible to furnish evidence which would support it. I think I may safely assume that the Government has not as a fact been in the habit of giving either a month"s notice or a month"s wages; and in truth, the expression in the written agreement of the terms alone on which Mr. Hughes can put an end to the service, goes far to show that there was no corresponding limitation on the side of the Government. So that it seems to me, after the best consideration I can give to the matter, that the period of service contemplated by the parties is indefinite; that it may be put an

end to by the Government at its pleasure, and by Mr. Hughes on giving six months" notice. I think it right to add, that although the Government can put an end to the service at its pleasure, it would not be allowed in a Court of Equity or in a Court of Law to exercise that power capriciously to the damage of the servant. The cases of *Parker v. Lord Clive* 4 Burr., 2419 and *Vertue v. Lord Clive* 4 Id., 2472, show that this restriction would always be taken to be an incident to power or right of this kind, pretty much, I may remark, upon the principle involved in the maxim *sic utere tuo ut alienum non laedas*, it will be well remembered that there the effect was not allowed to be given to the resignation of the military officers, although their contract of service was for an indefinite period determinable at pleasure, because the exigencies of the public service were at the time such that it was inconvenient that they should exercise their option at the particular juncture when they desired to do so².

¹ Code of Regulations for the P.W.D., Chapter IV, Section 1, Clause 32.--When any officer or subordinate in the Department is personally sued in a Court of Requests, or any Civil Court, by parties claiming from him wages or money arising out of transactions in which he is concerned only in his official capacity and bond fide on behalf of Government, it will be necessary that he defend the suit by pleading that Government should be made the defendant as the party really interested. But when the suit is for damages in respect of an alleged wrongful act of a Government officer, the party aggrieved may, as a general rule, bring the suit against such officer, and it would be his defence whatever for the officer sued to contend that Government ought to be the defendant. The plaintiff may legally contend that he has a right to look to the party by whose act he has been aggrieved whether he could or could not have sued that party's principal. The distinction is between suits on contracts and suits for wrongs. In cases of the latter kind it will remain with the Government to determine whether it would be just and proper that the defence should be carried on at the expense of Government. In either case, failing to defend the suit or to reply to the plaint in person or by attorney or vakeel as the case may require, the officer or subordinate will become personally responsible.

²The case was heard on the merits on July 24th. Mr. Macrae appeared for the plaintiff, and a decree was given for the plaintiff for Rs. 89-0-4, the 2nd, 3rd, and 4th issues being decided against the plaintiff. On the subject of costs, Phear, J., said:--

Of Mr. Hughes' behaviour, both before the Court and in so much of the controversy as preceded the act of filing the plaint, as I have had occasion to consider, I think it right to say that it has impressed me very favorably. It is seldom indeed that a suitor pending trial bears himself so fairly, with so much apparent honesty, and manly frankness towards his opponent as he has done. It is true that he has failed to establish the most important of his claims against the Government, but he has succeeded to a substantial extent, and it appears to me that the suit was one which, on account of the questions raised in it, it was very proper for him to bring in the Superior Court. The fault, if fault there was, of making recourse to litigation necessary, is certainly not his; and I therefore direct that his costs be

paid by the defendant.