NOTES OF CASES

THE LAW OF MASTER AND SERVANT AND NATURAL JUSTICE

Vasudevan Pitted v. *The City Council of Singapore* [1]

This is the first case on the question of natural justice to reach the Privy Council from Singapore. Although it does not, as will be seen, offer a well-reasoned exposition of legal principles expected of Privy Councillors, it does establish a novel point of law worth noting.

The plaintiffs, labourers in the employ of the then City Council of Singapore refused to obey orders given on behalf of the Council by their superior officers on the ground that the orders required them to do work which fell outside the scope of their employment. Two days later an inquiry was held by a senior official of the Council. While conducting the inquiry the official recorded the statements of some of the witnesses in the absence of the plaintiffs and after having submitted a report to the Deputy President of the Council, the official sent certain information on the dismissal issue to the Deputy President at the latter's request. The plaintiffs were not informed of this communication at that time. They were then summarily dismissed for refusing to obey the instructions of a senior officer. The plaintiffs were told that they had a right of appeal, which right they exercised. At the appeal the plaintiffs were represented by counsel. The appeal was dismissed.

Following this, the plaintiffs issued a writ against the Council claiming a declaration that the dismissal was wrongful and that they were still in the employ of the Council. They also claimed damages for wrongful dismissal.[2]

As observed by the Privy Council, a pure case of master and servant could give rise "to no application of the principle of *audi alteram* partem, on dismissal." [3] As such, to succeed in their claim for the declaration the plaintiff had to show that the normal master and servant law was not applicable to them by relying either on some statutory provisions or some special terms in their contract of service. To achieve this end they put in evidence, by consent, a set of rules or regulations formulated by the Council. The rules provided for the holding of an inquiry before the dismissal of an employee and an appeal procedure. Reliance was then placed on the following three propositions: (i) that the rules were expressly or by implication part of the terms of their employment or were so made by the operation of a statute or some statutory instrument and that they were entitled to the benefit of the rules and could sue for their breach; (ii) that before their dismissal they were entitled under the rules to an inquiry to which the rules of natural justice applied; (iii) that the rules of natural justice had been breached by the official who conducted the inquiry.

1. The facts of the case are in the main taken from the grounds of decision of Tan Ah Tah J., unreported. Suit No. 1487 of 1957.

2. This alternative claim (not argued before the Privy Council) was rejected by the trial judge Tan Ah Tah J. (as he then was). He was upheld by the Federal Court where Thomson L.P. adopted a strange line of argument to reject the appeal, namely that the plaintiffs had by their refusal repudiated the contract and the Council had exercised their right to treat the contract as at an end. Referring to this the Privy Council said that the Lord President based "... his decision on the doctrine of frustration, a doctrine which their Lordships think is somewhat remote in its application to the facts of the present case." The reference to the phrase "the doctrine of frustration" was an obvious error due, perhaps, to their Lordships' incautious reading of the Lord President's judgment.

3. See also Lord *Reid in Ridge v. Baldwin* [1964] A.C. 40 at p.65. It should be noted that this rule in the law of master and servant that an employee has no right to be heard in his own defence has been varied to a great extent by the decisions of the Industrial Arbitration Court in so far as cases before it are concerned: see cases cited in Chalmers, *Crucial Issues in Industrial Relations in Singapore,* pp.119-122.

The Privy Council dismissed the plaintiffs' appeal on the ground that they had failed to make out their first proposition. This must have come as a surprise to all the parties concerned for the trial judge and the Federal Court assumed the proposition to be correct and the defendants apparently did not seriously challenge it at any stage of the proceedings. The Privy Council came to this conclusion by saying that the real issue was whether by virtue of the Municipal Ordinance [4] the Rules had statutory effect and the onus of establishing that they were made under section 17 of the said Ordinance lay upon the plaintiffs but they never attempted to discharge the onus. They added conjecturally that the Rules could not have statutory force because the City Council could not have delegated their rule-making power to the sub-committee by which the Rules had been compiled. There, however, was not even the slightest suggestion that the City Council had not actually delegated such a power. Their Lordships in the Privy Council sought to bolster up their view by calling in aid the judgment of Wee Chong Jin C.J. in the Federal Court. The Chief Justice considered at length the issue of non-compliance with the rules of natural justice and resolved that the plaintiffs had been wrongfully dismissed under the Rules (or Regulations as he referred them to). He then made a *volte-face* and dismissed the appeal by the plaintiffs on the illogical ground that the plaintiffs ". . . had chosen to contest the issue whether they were entitled to refuse to perform certain work they were instructed to perform and whether such refusal entitled the City Council to summarily dismiss them and failed on this issue because on the merits of the case the City Council were entitled under the law of master and servant to dismiss them summarily and this they did." [5] The Chief Justice made no attempt to justify the irreconcilable conclusion he came to. It, however, led the Privy Council to say that it was implicit in the judgment of the Chief Justice that the plaintiffs could not rely upon the Rules as made pursuant to section 17 of the Municipal Ordinance. This interpretation of the Chief Justice's judgment, it is submitted, is not justified for if the Chief Justice had had it in his mind he would have made it explicit as the point was a fundamental one. Furthermore, the interpretation of the Privy Council presupposes the correctness of the decision of the Chief Justice and such a presupposition by a court which sits on appeal is not justifiable. ,

Assuming that the plaintiffs could not have proved that the rules had statutory effect, the way in which the Privy Council evaded the plaintiffs' contention that the rules were terms of their contract is even more surprising. Their Lordships said, "It is quite clear on the evidence that the Rules were not expressly or by implication incorporated into contract of service of the appellants or either of them and the contrary was scarcely argued before their Lordships." It was hardly necessary for the plaintiffs to argue the contrary for that was the very first proposition of their case.

Thus, the Privy Council's investigation of the status of the Rules and their ruling that the plaintiffs had failed to establish a ground to rely on the Rules is not altogether a satisfactory feature of the judgment.

Having ruled the plaintiffs out on their first proposition the Privy Council went on to consider two further questions. The first was assuming that the Rules applied, at what stage could the plaintiffs rely on them? On this point the Privy Council said that the relationship of master and servant gave rise to no application of the *audi alteram partem* principle on dismissal unless the Rules conferred a right on them. On their construction of the Rules, there was no hint at the inquiry stage that the employee was entitled to receive notice of the inquiry or be present at it. They added somewhat circuitously that they saw "no reason why in a case between Employer and Employee any such right should be implied" and concluded that only if the employee was dismissed had he any right to be heard. The view of Tan Ah Tah J. on this point was that the official was acting in a quasi-judicial capacity and therefore the rules of natural justice applied. The characterisation of the inquiry as quasi-judicial cannot be questioned especially because any finding by the official might seriously affect the rights of the employees. Wee Chong Jin C.J. seems to have implicity accepted this view. It is, moreover, clear that the holding of an inquiry was, under the Rules, a condition precedent to the plaintiffs'

4. Cap. 133, Revised Laws, 1936 Edition.

5. [1965] 2 M.L.J. 51 at p.55.

dismissal. Such an inquiry could be a meaningful one only if the plaintiffs had a right to be heard or be present at it. The view of the trial judge on this question seems preferable to that of the Privy Council.

The last question was, assuming that the rules of natural justice did apply to the inquiry, whether the defect in the procedure[6] was cured by what happened later. The point was a novel one and it is on this point that this decision adds something new to the law relating to natural justice. The trial judge held that ". . . the failure to comply with all the rules of natural justice at the inquiry was cured by the proceedings at the hearing of the appeal." The Chief Justice differed: "It seems to me on principle that where the quasi-judicial tribunal has failed to observe the rules of natural justice, such failure cannot be cured by the fact that on appeal, the appellate tribunal has so conducted its proceedings as to observe all the rules of natural justice."[7] As a general proposition the view of the Chief Justice may be a correct one but the facts of this case showed that the appellate tribunal not merely observed the rules of natural justice but went much further than that. The appeal was by way of rehearing. Evidence was heard *de novo* in the presence of the plaintiffs who had the opportunity to dispute the case against them. Counsel for the plaintiffs did in fact cross-examine the City Council's witnesses. The plaintiffs had ample opportunity to call their own witnesses and give their own evidence. By then they knew the communication between the Deputy President and the official, who was among those cross-examined by the plaintiffs' counsel. One cannot but agree with the view of the Privy Council that in such a situation different considerations should apply as all the defects alleged had by the end of the appeal been remedied. It must, however, be noted that the scope for the application of this ruling will be rather limited because in the normal course of events, appeal proceedings are not conducted by way of rehearing but by way of review in which case it may not be possible to cure the earlier defects. This aspect of the case indirectly lends support to the view that proceedings in breach of the *audi alteram partem* rule are not void but voidable.

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