Joseph Clement Louis Arokiasamy v Singapore Airlines Ltd
[2002] SGHC 200

Case Number : DC Suit 4929/1997

Decision Date : 30 August 2002

Tribunal/Court : High Court

Coram : MPH Rubin J

Counsel Name(s) : The plaintiff in person; Lawrence Teh and Sean La'Brooy (Rodyk & Davidson) for the defendants

Parties : Joseph Clement Louis Arokiasamy — Singapore Airlines Ltd

Administrative Law – Dismissal from employment – Natural justice – Breach – Whether plaintiff has right to be heard before dismissal -- Whether defendants' failure to comply with its administrative regulations amounts to breach of rules of natural justice Employment Law – Contract of service – Termination with notice – Applicable principles governing employer-employee relationship – Whether specific performance of contract of employment possible – Whether rules of natural justice to apply before dismissal – Whether court can reinstate employee to former job – Effect of non-compliance with s 14 of Employment Act (Cap 91, 1996 Ed) – s 14 Employment Act (Cap 91, 1996 Ed)

Employment Law – Contract of service – Termination with notice – Plaintiff alleging dismissal void and claiming reinstatement – Defendants applying to strike out certain prayers in plaintiff's amended statement of claim – Defendants applying for determination of certain questions of law – Whether defendants obliged to plaintiff right to be heard before dismissal – Whether plaintiff given chance to explain his unauthorised absence from work – Whether to allow striking out – O 14 r 12 Rules of Court

Judgment

GROUNDS OF DECISION

Introductory

1 This was an interlocutory appeal against the decision of the district judge ordering that certain prayers in the plaintiff's amended statement of claim be struck out. In brief, the appeal before me was concerned mainly with the plaintiff's contention that he had been prevented from seeking a declaration that his dismissal by the defendants was contrary to the principles of natural justice as he was dismissed without a hearing although his contract of employment obligated his employers to give him a hearing. I allowed the plaintiff's appeal insofar as the said prayer was concerned, holding that the said issue be best determined at the main trial. There were two other prayers under appeal. In relation to the plaintiff's second prayer for an order for reinstatement in his former employment, I upheld the decision below without prejudice to whatever reliefs the trial court may deem fit to order under prayer 7. As regards prayer 3, I allowed the appeal. The facts which gave rise to this appeal and my grounds are as follows.

Background facts

2 The plaintiff had been in the employment of Singapore Airlines Limited (SIA), the defendants herein, from 1973 until his services were terminated in March 1997.

3 Admittedly, sometime in the course of 1996, the plaintiff was investigated by the Corrupt Practices Investigation Bureau; arrested on 18 February 1997 and charged in court. As he was unable to raise the bail amount, he was remanded in Queenstown Remand Prison until the conclusion of his trial and subsequent acquittal.

4 As it happened, whilst the plaintiff was in remand, he received a letter from the defendants dated 5 March 1997. The relevant part therein reads:

Dear Mr Clement,

You have not reported for work since 21 February 1997 nor have you given the Company any reason for your unauthorised absence. You have therefore broken your contract of service with the Company and your employment is terminated with effect from 21 February 1997. Your last day of service was, therefore, 20 February 1997.

2. Consequent on your termination, you will be paid your salary up to and including 20 February 1997.

5 Following his acquittal of the charges in June 1997, the plaintiff sought reinstatement with the defendants but to no avail. Furthermore no agreement was reached between the parties on the compensation package. The plaintiffs then took out a suit - D C Suit 4989 of 1997 in November 1997 - against the defendants claiming damages for his alleged wrongful dismissal. However, about six months later, he sought the intervention of the Singapore Airlines Staff Union (SIASU) to bring his grievance before the Industrial Arbitration Court. SIASU declined his request stating that they could not justify an appeal under s 35(1) of the Industrial Relations Act.

6 The plaintiff's application to the court for a declaration and an order to compel SIASU to act pursuant to his request, was unsuccessful in the first instance as well as on appeal to the Court of Appeal.

7 The Court of Appeal, in dismissing his appeal, observed at para 14 of its judgment that '… while it may well be the case that a contract exists between the SIASU and the appellant that the rules of a trade union form the terms of such contract between the parties, the judge was correct to hold that article 3.2(iii) is not a term in the constitution capable of being enforced by a court of law.'

8 The Court of Appeal further commented at para 28: 'While we sympathise somewhat with the appellant's position given the circumstances under which he lost his job, we cannot find a legal basis on which to make the declarations he applied for which compel the SIASU to make arrangement such that his case may be brought before the IAC. If at all, the proper party against whom the appellant should pursue his redress, if he feels that he has been done wrong by, is Singapore Airlines. In the premises, we dismiss the appeal with costs to be taxed.'

9 The upshot was the resuscitation of the plaintiff's action against the defendants and by Summons-In-Chambers No 612285 of 2000 dated 1 September 2000, the plaintiff applied to court for leave to amend his statement of claim. Insofar as is material, the proposed amendments included the following segments:

6. Further and/or in alternative the said termination letter dated 05th March 1997, was unfair, in breach of the principles of rules natural justice and was actuated by malice and/or made in bad faith by the Defendants and/or its servants, and that the Defendants were not in accordance with and in breach of the Conditions of Service on Confirmation as provided for in the Defendants Personnel Procedures Manual 01st December 1992.

Particulars

(I) Conduct and discipline 8-3 Disciplinary inquires.

Disciplinary inquiries for unionised staff.

(1) If a Divisional Director considers that an employee in his division has committed an offence which, if proven, does not warrant severe disciplinary action such as dismissal, demotion, or forfeiture of service increments, he may initiate actions for a departmental inquiry.

(2) If an offence warrants dismissal, demotion, or forfeiture of service increments, the Divisional Director shall write to the Director of Personnel or to the Personnel Manager, requesting for a Company inquiry to be convened. His memo shall contain full details of the alleged offence or act of misconduct and shall also contain the names of any witnesses to the incident and all other relevant information.

(J) Section 8-4 Procedures for Disciplinary Inquiries.

Procedures.

(1) The Procedures for disciplinary inquiries for all staff expect technical crew and managers and above are set out below. For technical crew, the procedures set out in their Collective Agreement will apply. The procedures for managers and above are set out separately.

(10). For the reasons stated above the Plaintiff contends that he was and is still in the employment of the Defendants as shown in the Defendants letter addressed and dated 28th February 1997, to the Plaintiff, and the Plaintiff by way of his appeal letters sent to the Defendants on 24th June 1997, 23rd July 1997 and 29th July 1997. The Defendants were in breach, non-observance, and not in accordance with the express and implied terms of the following:-

(a) Collective Agreement.

(b) Conditions of Service on Confirmation.

(c) Defendants Personnel Procedures Manual 01st December 1992.

(d) Not in accordance with

section 13 (2) (a) and (b) of the Employment Act.

11. The Plaintiff for the reasons stated above has suffered loss and damages. And the Plaintiff claims:-

(1) **A declaration that the purported dismissal/termination of the Plaintiff with effect from 21st February 1997 as stated by way of the Defendants letter dated 05th March 1997, as null and void, unlawful, inoperative and of no effect on the following grounds:-**

(a) Unfair. (b) Likelihood of Bias. (c) Discrimination and Victimisation (d) Unfair Labour Practices. (e) **Breach of rules of Natural Justice**. (f) Non-observance and in breach of an (sic) Court award the ("Agreement").

(2) **An order that the Plaintiff be reinstated to his position as an Inflight Services Officer with the Defendants.**

(3) **An order to pay the loss of salary from 24th June 1997 at $2,071.88 per month and continuing, and loss of annual bonuses, increments, employers CPF contributions and all travel benefits from 24th June 1997 and continuing.**

(4) Damages for unfair dismissal/termination.

(5) Costs.

(6) Interest.

(7) Further and other relief as this Honourable Court deems fit.

Dated this 21st day of September 2000.

[Highlight added]

10 The defendants would not let the application go uncontested. They for their part took out a cross application (SIC No. 612790 of 2000) to strike out the plaintiff's action as well as the plaintiff's proposed amendments on grounds of want of prosecution and that the plaintiff's claim disclosed no reasonable cause of action, was frivolous or vexatious or an abuse of the process of court.

11 The result was on 24 November 2000, both applications were heard by the Deputy Registrar of the Subordinate Courts, Terence Chua, who after dismissing the defendants' application to strike out the plaintiff's claim, granted leave to the plaintiff to amend his statement of claim as prayed for by him. The duly amended statement of claim was filed by the plaintiff on 4 December 2000.

12 Approximately a year later, on 15 November 2001, the defendants required further and better particulars of the plaintiff's amended

statement of claim which the plaintiff provided on 23 November 2001.

13 Thereafter, the defendants filed their re-amended defence on 21 February 2001. The defence was originally filed on 12 December 1997 and was previously amended on 19 December 2000. Insofar as is material, paras 5 to 15 of the re-amended statement of claim read as follows:

> 5. Save that no admission is made with regard to the Collective Agreement being an award certified by a Court and as to the terms of and parties to the Collective Agreement paragraph 5 of the Amended Statement of Claim and the particulars under paragraph 5(i) are denied.
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> 6. Paragraph 5 (ii) of the Amended Statement of Claim is denied.
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> 7. No admission is made with regard to the provisions set out in paragraph 5(iii) of the Amended Statement of Claim.
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> 8. Save that no admission is made with regard to the provisions of Section 26 of the Industrial Relations Act paragraph 5(iv) of the Amended Statement of Claim is denied.
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> 9. Save that no admission is made with regard to whether the Collective Agreement is an award certified by a Court paragraph 5(v) of the Amended Statement of Claim is denied.
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> 10. Save that no admission is made with regard to the provisions of the Personnel Procedures Manual as set out in the Particulars I to L under paragraph 6 of the Amended Statement of Claim paragraph 6 of the Amended Statement of Claim is denied. The Defendants further aver that the said provisions of the Personnel Procedures Manual are irrelevant and/or cannot be relied on by the Plaintiff. The Defendants repeat paragraph 3 above.
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> 11. Paragraph 6(K) of the Amended Statement of Claim is denied and the Defendants aver that the Disciplinary Inquiry Procedure is not available to the Plaintiff. The Defendants repeat paragraph 10 above.
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> 12. Save that the provisions of Section 13(2) (a) and (b) of the Employment Act are admitted, paragraph 6 (L) of the Amended Statement of Claim is denied.
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> 13. Paragraph 10 of the Amended Statement of Claim is denied and the Defendants repeat paragraph 1 above.
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> 14. Paragraph 11 of the Amended Statement of Claim is denied and the Defendants aver that the Plaintiff is not

entitled to the declaration and/or orders sought and/or damages as alleged or at all.

15. Save as hereinbefore expressly admitted, the Defendants denies (sic) each and every allegation contained in the Amended Statement of Claim as though the same were herein set out and traversed seriatim.

14 Nearly nine months later, on 27 November 2001, the defendants applied to the court by way of a Summons-For-Directions (SIC No. 603604 of 2001), amongst other things for the determination of certain questions of law pursuant to O 14 r 12 of the Rules of Court as well as for striking out prayers 11(1)(e), (2), (3) (see para 9 herein - highlighted parts) and such corresponding pleadings in the plaintiff's amended statement of claim filed two years ago on 1 September 2000.

15 In the said summons for directions, the defendants applied for the following prayers:

5. **The determination of the Court pursuant to Rules of Court, Order 14 Rule 12 of the following questions of law, namely:**

(1) **Whether the contract of employment between the Plaintiff and the Defendants gives rise to the principle of audi alteram partem and/or to principles of natural justice; and**

(2) Whether any relief for an order for reinstatement may be claimed by the Plaintiff arising from the non-conduct by the Defendants of an inquiry prior to termination of the Plaintiff's employment.

6. Further or in the alternative, that the following parts of the Amended Statement of Claim be struck out

(1) Amended Statement of Claim Prayer (1)(e);

(2) Amended Statement of Claim Prayer (2);

(3) Amended Statement of Claim Prayer (3);

(4) and such corresponding pleadings in the Amended Statement of Claim as the Court thinks fit. [Highlight added]

and the Plaintiff's claim thereunder be dismissed with costs under Rules of Court Order 18 rule 19 (1)(a), (b), (d) and/or under the inherent jurisdiction of the Court on the grounds that it discloses no reasonable cause of action, is frivolous or

vexatious, and/or it is otherwise an abuse of the process of Court.

The grounds for the application herein are:-

(a) The Defendants wish to give further discovery of documents relating to instances in which the contracts of employment of employees of the Defendants were terminated without prior inquiry, and further discovery of documents relating to the issues in the action herein.

(b) Time is required by the Defendants to study the Further and Better Particulars served on 23 November 2001.

(c) The Defendants have applied herein for a summary determination of questions of law under Order 14 rule 12 of the Rules of Court and it would save time and costs for the affidavits of evidence in chief of the witnesses to be exchanged after the determination of the questions of law as framed herein.

16 The plaintiff for his part on 9 January 2002 applied to the court (SIC No 600037/2002) for the dismissal of the defendants' summons for directions (SIC No. 603604 of 2001) on the ground that it was an abuse of process of court. In an affidavit filed by the plaintiff to support his application (SIC No 600037/2002), he said:

3. Based on the Chronology of Events, your Honour will note that I had applied for leave to amend my Statement of Claim on the 1st of September 2000, and the Defendants took out a cross application on the 22nd of September 2000, to dismiss my application.

4. Both application (sic) was (sic) heard on the 26th of September 2000, and at that hearing, the Defendants' solicitors requested for an adjournment to file their clients' affidavit.

5. The matter was then heard on the 10th of October 2000. An Order was made in the Plaintiff's favour as the Defendants' solicitors failed to turn up for the hearing.

6. The Defendants' solicitors then took out an SIC to set aside the Orders made on the 10th of October 2000.

7. The matter was finally heard on the 24th day of November 2000, and the Plaintiff was given leave to amend his Statement of Claim.

8. As such, the Defendants' paragraphs 6 (1) to (4), of the said application of the Defendants filed on the 27th of November 2001, is an abuse of the process of Court.

9. Furthermore the grounds for the application as stated by the Defendants on page 3 (a) (b) and (c), are totally irrelevant and are not connected with the two affidavits filed on the 31st of December 2001, and on the 3rd of January 2002.

10. As for paragraph 5 (1) and (2), of the Defendants said application, the matter should be decided at the trial.

17 The defendants' application (SIC No 603604) and the plaintiff's application (SIC No 600037/2002), were heard by the Deputy Registrar of the Subordinate Courts, Ng Peng Hong on 18 January 2002. Upon answering the questions of law framed in paras 5(1) and 5(2)

of the defendants' application (see para 15 herein - highlighted parts) in the negative, the Deputy Registrar ordered that prayers 11 (1)(e), (2) and (3) of the plaintiff's amended statement of claim be struck out. At the same time, the Deputy Registrar also dismissed the application of the plaintiff (SIC No 600037 of 2002).

18 The effect of the decisions of the Deputy Registrar was that the plaintiff could not contend at the trial that his dismissal was in breach of the rules of natural justice; (prayer 11(1)(e)); he could not claim an order for reinstatement in his former employment (prayer 11(2)); and that he could not claim loss of salary and other emoluments from 24 June 1997.

19 The plaintiff filed a notice of appeal against the decision of the Deputy Registrar on 31 January 2002 (RAS 600003/2002). His notice of appeal stated that he intended to appeal against the decision given on 18 January 2002, dismissing his application (SIC No 6000037 of 2002).

20 This appeal was heard by District Judge Tan Peck Cheng on 18 February 2002. She dismissed the plaintiff's application. In her grounds delivered on 11 April 2002, she dealt with both SIC No. 600037 of 2002 taken out by the plaintiff and the defendants' Summons-For- Directions No 603604 of 2001, and concluded at para 11 of her grounds that having regard to the facts of the case, she was in agreement with the earlier decision, that the questions of law submitted to the court were 'appropriate for determination under O14 r 12 of the Rules of Court'.

21 After reciting the law enunciated by the Privy Council in ***Ridge v Baldwin And Others*** [1964] AC 40, ***Vasudevan Pillai & Anor v The City Council of Singapore*** [1968] 2 MLJ 16, ***Lim Tow Peng & Anor v Singapore Bus Services Ltd*** [1976] 1 MLJ 254, she observed at para 15 of her grounds:

> 15. On the authority of the above-mentioned cases there is no requirement of natural justice in the contract of employment and reinstatement is not a remedy available to the plaintiff here. In view of that I agree with the learned Deputy Registrar that the answers to 5(1) and (2) must be in the negative and consequently order in terms should be given for prayer 6. I am also of the view that the directions given by the learned Deputy Registrar in prayers 1 to 4 are in order. In the result I dismissed the plaintiff's appeal.

22 The plaintiff then appealed to the High Court. In his notice of appeal (RAS 600005/2002) he prayed that the decision of the district judge made on 18 February 2002 – grounds of which were delivered on 11 April 2002 - be reversed.

23 He later applied to the court to amend the notice of appeal in the following terms:

> ...
>
> 1. The Order of Court of the District Judge Ms Tan Peck Cheng, given on 18 Feb 2002, pursuant to Registrar's Appeal No. 600003 of 2002 (affirming the Order of Court made by the District Judge Mr Ng Peng Hong sitting as a Deputy Registrar, in respect of:-
>
> > i) the Defendants' adjourned application for Further Directions (Entered No. 603604 of 2001), filed on 27 Nov 2001; and
> >
> > ii) the Plaintiff's application (Entered No. 6000037 of 2002, filed on 9 Jan 2002

having heard and determined both applications as one and the same), be set aside.

2. The Orders made by the District Judge in respect of the Defendants' application for Further Directions Entered No. 603604 of 2002 be set aside.

3. The determination of the following questions of law, posed by the Defendants (in the application Entered No. 603604 of 2001 filed on 27 Nov 2001), in prayers numbered 5, namely:-

a. Whether the contract of employment between the Plaintiff and the Defendants give rise to the principle of "audi alteram partem" and/or to principles of Natural Justice; and

b. Whether any relief for an order of reinstatement may be claimed by the Plaintiff arising from the non-conduct by the Defendants of an inquiry prior to termination of the Plaintiff's employment.

and/or consequently Prayer 6 of the said application, be left for determination by the judge at the trial of this action.

4. The costs of:-

a. this Appeal (RAS No. 600005 of 2002); and

b. the Defendants' application for Directions Entered No. 603604 of 2001 filed on 27 Nov 2001; and

c. the Plaintiff's application Entered No. 6000037 of 2002 filed on 9 Jan 2002; and

d. the Plaintiff's Appeal (RAS 600003 of 2002 filed on 31 Jan 2002);

be taxed and paid by the Defendants to the Plaintiff.

5. Such further and/or other relief(s) as may appear just and equitable and/or expedient to this Honourable Court.

24 The plaintiff's application for the amendment was objected to by defendants' counsel. I found the objection unmeritorious since it was plain that his notice of appeal was comprehensive to cover the whole of the district judge's decision which dealt with the plaintiff's as well as the defendants' earlier applications. In any event, in my view, the plaintiff could have argued his appeal even without an order to amend his notice of appeal since I found his earlier notice of appeal to be all embracing. Consequently, I ruled that the plaintiff be allowed to canvass the points contained in his application for amendment. In this milieu, the appeal was argued before me.

Arguments

25 On appeal, the point of contention by the plaintiff was that the principles extracted from ***Ridge v Baldwin*** (*supra*), ***Vasudevan Pillai*** (*supra*) and ***Lim Tow Peng*** (*supra*) should not be viewed in isolation. He suggested that the facts and circumstances of the cases referred to bore little resemblance to his case and that the provisions of the personnel procedure manual which required the defendants to conduct a hearing before an employee's services could be terminated, took the case out of the ambit of the principles cited to the court. He further suggested that the terms of his contract obligated his employers to give him a hearing; their failure and the implications arising therefrom could not be appreciated without him being able to canvass the breach of one of the important terms of his contract of employment. Implicit in his contention was the aspect that had his employers given him a hearing he would have been able to demonstrate to them that his absence from work was not unauthorised and that he had broken none of his contractual obligations.

26 Counsel for the defendants contended otherwise. He submitted that the law had already been well-settled and that there was no room for the principles of natural justice in a pure master and servant relationship.

Law and conclusion

27 As I said earlier, the appeal before me revolved around the rulings contained in an order made by the learned district judge on 11 April 2002 in relation to two questions of law, submitted to the court by the defendant's counsel, and the consequential striking out of certain prayers for relief ie, prayers 11(1)(e); (2) and (3) of the plaintiff's statement of claim (see para 9 herein – highlighted parts).

28 The first question submitted to the court below by counsel for the defendants was: whether the contract of employment between the plaintiff and the defendants gave rise to the principle of *audi alteram partem* or the principles of natural justice. Simply stated, the question was whether the plaintiff should have been accorded a hearing by his employers before his services were terminated. The plaintiff's contention before me was that this issue could not be decided in a vacuum, without determining first whether the personnel procedure manual of SIA (adverted to by the plaintiff in his statement of claim) which seemed to require a hearing before termination, applied to the plaintiff's employment contract. He said that he intended to call witnesses to support his contention that the said personnel procedure manual was part and parcel of the plaintiff's employment contract as had been applied by the defendants over the years to many of their employees.

29 It would be useful at this stage to revisit the principles of law relied on by the defendants in the courts below.

30 In ***Ridge v Baldwin*** (*supra*), the facts as they appear in the headnotes are as follows:

31 In 1956 the appellant was appointed chief constable of a borough police force, the appointment being subject to the Police Acts and Regulations. On October 25 1957, he was arrested and charged, together with other persons, with conspiracy to obstruct the course of justice. On October 28 1957, he was suspended from duty by the borough watch committee. On February 28 1958, he was acquitted by the jury on the criminal charges against him but Donovan J, in passing sentence on two police officers who were convicted, said that the facts admitted in the course of the trial established that neither of them had that professional and moral leadership which they should have had and were entitled to expect from the chief 'constable.'

32 On March 6 1958, on a charge alleging corruption against the appellant, on which no evidence was offered, the judge referred to the borough's police force and remarked on its need for a leader who would be a new influence and who would set a different example from that which had lately obtained.

33 After his acquittal, the appellant applied to be reinstated. However, on March 7 1958, the watch committee (constituted under s 191 of the Municipal Corporations Act and had certain powers to hire and fire borough consultants) at a meeting decided that he had been negligent in the discharge of his duties as chief constable and in purported exercise of the powers conferred on them by s 191 (4) of the Act of 1882, dismissed him from that office. Section 191 of the Municipal Corporations Act, 1882 provided: (1) "The watch committee shall from time to time appoint a sufficient number of fit men to be borough constables … (4) The watch committee … may at any time suspend, and … dismiss, any borough constable whom they think negligent in the discharge of his duty, or otherwise unfit for the same."

34 It must be observed at this stage that no specific charge was formulated against the appellant either at that meeting or at another on March 18, when the appellant's solicitor addressed the committee, but the watch committee, in arriving at their decision, considered (inter alia) his own statements in evidence and the observations made by Donovan J on February 28 and March 6.

35 On the appellant's appeal to the Home Secretary, the decision given was that there was sufficient material on which the watch committee could properly exercise their power of dismissal under section 191 (4). The appellant then brought an action against members of the watch committee for a declaration that his dismissal was illegal, ultra vires and void, and payment of salary from March 7 1958, or alternatively, payment of pension from that date and damages.

36 On appeal, the House of Lords (per Lord Reid, Lord Evershed, Lord Morris of Borth-Y-Gest, Lord Hodson and Lord Devlin - with Lord Evershed dissenting) held that the decision of the respondents to dismiss the appellant was null and void; and that, accordingly, notwithstanding that the decision of the Home Secretary was 'final and binding on the parties' by s 2 (3) of the Police Appeals Act 1927, that decision could not give validity to the decision of the respondents.

37 It was further held by Lord Reid, Lord Morris and Lord Hodson at page 42 that:

As the appellant was not the servant of the respondents and they could dismiss him only on grounds stated in section 191 (4) of the Act of 1882, and they dismissed him on the ground of neglect of duty, they were bound to observe the principles of natural justice (post, pp. 66, 79, 121, 124, 127, 132) by informing the appellant of the charges made against him and giving him an opportunity of being heard, and that they had not done.

38 In his speech, Lord Reid observed at page 65:

> *The law regarding master and servant is not in doubt. There cannot be specific performance of a contract of service, and the master can terminate the contract with his servant at any time and for any reason or for none*. But if he does so in a manner not warranted by the contract he must pay damages for breach of contract. So the question in a pure case of master and servant does not at all depend on whether the master has heard the servant in his own defence: it depends on whether the facts emerging at the trial prove breach of contract. *But this kind of case can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the kind of contract which it can make with its servants, or the grounds on which it can dismiss them*. The present case does not fall within this class because a chief constable is not the servant of the watch committee or indeed of anyone else.
>
> [Emphasis added.]

39 The principles of law propounded in ***Ridge v Baldwin*** were followed in ***Vasudevan Pillai*** (*supra*) a Singapore case.

40 In that case, the appellants who were daily rated unskilled employees of the respondent council, had been dismissed without due notice for refusing to obey an order given to them by a *serang* (headman) on behalf of the respondents. Before their dismissal, an inquiry into the incident was held by an officer of the respondents. The appellants appealed against their dismissal to a sub-committee of the establishments committee of the respondents which dismissed their appeal.

41 Following this, the appellants sought a declaration that their dismissal had been wrongful and that they were still in the employ of the respondents.

42 At the trial, the appellants had put in evidence, with consent, some of the rules formulated by the respondents with regard to the recruitment, engagement and discipline of the staff. The appellants contended first, that the rules were expressly or by implication part of the

terms of employment, or that they were so made by the operation of statute or some statutory instrument having the like effect. Alternatively they contended that they were entitled to the benefit of the statutory instrument and entitled to sue for its breach. Secondly, upon the construction of the rules, before they were dismissed they were entitled to an inquiry to which the rules of natural justice applied. Thirdly, that these rules of natural justice had not been observed.

43 The plaintiff's case was dismissed by the High Court as well as by the Federal Court. The plaintiffs then appealed to the Privy Council.

44 In dismissing the plaintiff's appeal, the Privy Council held at page 16:

> (1) *the appellants must rely on the rules to establish their case. On the evidence the rules were not expressly or by implication incorporated into their contracts of service. The onus of establishing that the rules, being made under and by virtue of section 17 of the Municipal Ordinance, had statutory force and that they were entitled at law to their benefit, lay upon the appellants but they had not discharged that onus*. Accordingly the appellants failed to establish a ground upon which they could pray in aid the relevant provisions of the rules to support their case that the principles of natural justice applied before they could be validly dismissed; [Emphasis added.]

45 Lord Upjohn in affirming the decision of the courts below, commented at page 20:

> The matter stands thus. Assuming that contrary to their Lordships' opinion the appellants can rely upon the rules either as part of the contract of employment or as a statutory instrument on which they are entitled to rely how far does this assist them?
>
> Their Lordships have already pointed out that the relationship of master and servant or employer and employee gives rise to no application of the principle of audi alteram partem on dismissal. *Therefore the court, in construing the rules (for it is purely a matter of construction) must consider in the first place whether those rules were introduced to give rights to the employee or only to provide a scheme or code for the general administration by the staff of the respondent council and their officers and to provide guidance for the heads of departments*. Even the second construction would no doubt provide substantial protection for the employees in the security of their employment particularly against possibly petty-minded immediate superiors who might otherwise take an ill advised and presumptuous course to discipline or even dismiss their immediate inferiors, but would not necessarily give them any rights under the rules. [Emphasis added]

46 This brings me to the Singapore Court of Appeal decision in ***Lim Tow Peng*** (*supra*). The facts in this case are as follows.

47 The appellants were informed that their services had been terminated after due investigation into their misconduct. In fact no enquiry was made on the appellants of any alleged misconduct on their part; nor were they told of the nature of any alleged misconduct on their part. They were not given any opportunity to be heard concerning any alleged misconduct on their part. The appellants claimed a declaration that their purported dismissal by the respondents was inoperative, null and void and alternatively for damages. At the trial it was conceded that the dismissal of the appellants was wrongful and that the respondents were liable to pay such damages as the court may assess. The learned trial judge held that the appellants were entitled to damages but declined to make the declaratory order sought by the appellants. The appellants appealed.

48 In dismissing the appeal, the Court of Appeal held:

> (1) the provisions of section 14 of the Employment

Act are not mandatory. An employer is not obliged to comply with section 14 but if he disregards section 14 and dismisses an employee without an enquiry, as in this case, the dismissal can be enquired into and reinstatement with full pay ordered by the Minister. But no other right is given by section 14. The effect of the section is that a dismissal without notice before due enquiry is wrongful and not that it is ineffective or null and void.

49 In delivering the judgment of the Court of Appeal, Choor Singh J said at page 257:

> The appellants' case was based mainly on the provisions of section 14 of the Employment Act. Put shortly, it was this: that the respondents having failed to comply with section 14, their breach of that section entitled the appellants to a Declaratory Order on the authority of *Vine's* case.
>
> Section 14 in its present form came into effect on September 1, 1973 and it is quite obviously based, to some extent, on the "unfair dismissal" provisions of the Industrial Relations Act, 1971 of England, which has placed a statutory limitation on the employer's common law right to dismiss, whether by notice or for cause, which limitation has been described as the right of an employee to object to an "unfair dismissal." The provisions of the Industrial Relations Act 1971 are much more comprehensive than Part II of our Employment Act and it is unnecessary to consider them save to point out that even under that Act, an employee who considers that he has been unfairly dismissed has no right to go to court and ask for reinstatement but may present a complaint to an industrial tribunal. If the tribunal finds that the complaint is well founded and considers that it would be practicable and in accordance with equity for the complainant to be re-engaged by the employer, the tribunal may make a recommendation to that effect, stating the terms on which it considers that it would be reasonable for the complainant to be so engaged. Otherwise, if it thinks the claim well founded but does not make such a recommendation, or if the recommendation so made is not complied with, the tribunal makes an award of compensation. (Section 106 of the Industrial Relations Act, 1971).
>
> It will be seen that the refusal of the ordinary courts under the common law specifically to enforce a contract of employment where the employment has been wrongfully terminated has been dealt with in England by the legislature in the remedies available for unfair dismissal under the Industrial Relations Act, 1971. And this refusal has also been dealt with by our legislature in the remedies now available in Singapore for unfair dismissal from employment under section 14 of the Employment Act. Under section 14, an employee who considers that he has been unfairly dismissed, may present a complaint to the Minister who has the power to direct the employer to reinstate the employee in his former employment. The section gives a dissatisfied employee the right to complain to the Minister. It is a right to object to an unfair dismissal. The section does not give him any other right. It does not confer on an employee any status. It does, of course, indirectly restrict the employer's right to dismiss in that the dismissal can be enquired into and overruled by the Minister if a complaint is made to him. And it gives the Minister, not the courts, the power to order reinstatement of the employee. In our judgment the provisions of section 14 are not mandatory. An employer is not obliged to

> comply with section 14 but if he disregards section 14 and dismisses an employee without an enquiry, as in this case, the dismissal can be enquired into and reinstatement with full pay ordered by the Minister whose decision cannot be challenged in any court. The effect of section 14 is that a dismissal without notice before due enquiry is wrongful and not that it is ineffective or null and void.

50 The principles that can be gathered from the foregoing cases are these: Firstly, there cannot be any specific performance of a contract of service; an employer can terminate the contract with his servant at any time for any reason or for none but if he does in a manner not warranted by the contract he must pay damages for the breach of contract (see Lord Reid's speech in ***Ridge v Baldwin*** at page 65, *supra*); secondly, the onus would be on the claimant to establish that the relevant rules support his case that the principles of natural justice applied before he could be validly dismissed (see ***Vasudevan Pillai*** – headnote held No. 1 and the comments of Lord Upjohn at page 19, *supra*); and thirdly if an employer were to dismiss an employee in breach of s 14 of the employment, only the Minister has the power to reinstate the employee in his former employment; and the effect of the said s 14 is that a dismissal without notice before enquiry is wrongful and not that it is ineffective or null and void (see ***Lim Tow Peng*** – per Choor Singh J at page 257, *supra*).

51 I must also mention at this stage that the principles articulated by Lord Reid in ***Ridge v Baldwin*** came up for consideration before the House of Lords in ***Malloch v Aberdeen Corporation*** [1971] 1 WLR 1578 (the appeal committee comprising Lord Reid, Lord Morris of Borth-Y-Gest, Lord Guest, Lord Wilberforce and Lord Simon of Glaisdale). In that case, a Scottish teacher whose terms of employment were set out mainly in statute, appealed to the House of Lords against the decision of the education committee dismissing him without a hearing. In allowing his appeal, Lord Wilberforce in his speech at page 1597B-E observed:

> In *Ridge* v. *Baldwin* my noble and learned friend, Lord Reid, said [1964] A.C. 40, 65: "It has always been held, I think rightly, that such an officer" (sc. one holding at pleasure) "has no right to be heard before being dismissed." As a general principle, I respectfully agree: and I think it is important not to weaken a principle which, for reasons of public policy, applies, at least as a starting point, to so wide a range of the public service. The difficulty arises when, as here, there are other incidents of the employment laid down by statute, or regulations, or code of employment, or agreement. The rigour of the principle is often, in modern practice mitigated for it has come to be perceived that the very possibility of dismissal without reason being given – action which may vitally affect a man's career or his pension – makes it all the more important for him, in suitable circumstances, to be able to state his case and, if denied the right to do so, to be able to have his dismissal declared void. So, while the courts will necessarily respect the right, for good reasons of public policy, to dismiss without assigned reasons, this should not, in my opinion, prevent them from examining the framework and context of the employment to see whether elementary rights are conferred upon him expressly or by necessary implication, and how far these extend. The present case is, in my opinion, just such a case where there are strong indications that a right to be heard, in appropriate circumstances, should not be denied.

52 Further, it seems that at present, the common law, moving in step with the statutory unfair dismissal jurisdiction and modern ideas of personnel management, has indicated a somewhat wider scope to the need for an unbiased hearing. In ***Stevenson v United Road Transport Union*** [1977] 2 All ER 941 (CA), the plaintiff, a full-time employee of the defendant trade union, was dismissed by its executive after disciplinary proceedings. His claim that his dismissal was invalid because he was not given an adequate opportunity to defend himself, was upheld by the Court of Appeal. Buckley LJ reformulated the principle after a full review of the authorities, in the following terms, at pages 948 and 949:

> Counsel for the union has contended that the principles applicable here are those applicable to the dismissal of a servant by his master, where, as Lord Reid pointed out in *Ridge v Baldwin*, the master is under no obligation to hear the servant in his own defence (and see *Malloch v Aberdeen Corpn*, per Lord Reid). Counsel for the union contends that there is no circumstance in this case which elevates the plaintiff's position to that of an officer whose tenure of his office or whose status as an officer cannot be terminated without his being given an opportunity to answer any charges made against him or any criticisms of him or of his conduct. In our opinion, it does not much help to solve the problem to try to place the plaintiff in the category of a servant, on the one hand, or of an officer, on the other. It is true that in *Ridge v Baldwin* Lord Reid divided cases of dismissal into three classes: (1) dismissal of a servant by his master; (2) dismissal from an office held during pleasure, and (3) dismissal from an office when there must be something against a man to warrant his dismissal; but he goes *on in the*

next paragraph to point out that, although in 'a pure master and servant case' the master need not hear the servant in his own defence, dismissal of a servant by a master can resemble dismissal from an office where the body employing the man is under some statutory or other restriction as to the grounds on which it can dismiss its servants. Moreover, the problem is not confined to termination of contracts of employment. It may arise in relation to the termination or denial of a privilege, as in *Russell v Duke of Norfolk*, or of an office which does not involve any contract of employment, as in *Breen v Amalgamated Engineering Union*. In our judgment, a useful test can be formulated in this way. *Where one party has a discretionary power to terminate the tenure or enjoyment by another of an employment or an office or a post or a privilege, is that power conditional on the party invested with the power being first satisfied on a particular point which involves investigating some matter on which the other party ought in fairness to be heard or to be allowed to give his explanation or put his case?* If the answer to the question is Yes, then unless, before the power purports to have been exercised, the condition has been satisfied after the other party has been given a fair opportunity of being heard or of giving his explanation or putting his case, the power will not have been well exercised. [Emphasis added]

53 Reverting to the appeal at hand, the issue that is to be decided in the main trial of the present case would be, whether it was the defendants who had committed a breach of their contract of employment as is being alleged by the plaintiff or it was the plaintiff who had broken his terms of employment as is being claimed by the defendants in their letter of dismissal dated 5 March 1977. The plaintiff's averments in his various affidavits and pleadings suggest that he had not breached any of the terms of his employment, his employers knew the reasons for his absence from work and had they given him a hearing – which he maintains ought to have given him under the provisions of the personnel procedure manual that forms part of his contract of service – he would have proven to them that his absence was not unauthorized, not improper and not in breach of his terms of employment.

54 In my view, a judicial evaluation of the contestants' mutual obligations and breaches could not be satisfactorily undertaken by the court at the main trial without considering whether in the first instance there was an obligation on the part of the defendants to provide the plaintiff a hearing – since this aspect would most certainly have a bearing on the relief to be granted. Conversely, the allegation of the defendants that it was the plaintiff who had broken his terms of employment could not be adjudged without the court enquiring into whether the plaintiff was given the opportunity to explain his absence. Given this backdrop, the application by the defendants for the determination of the first question to the court below was found by me to be premature, since it neither purports to dispose of the entire cause or matter nor does it fully determine – I emphasize the word 'fully' - even a single issue as envisaged under O 14 r 12 of the Rules of Court (see ***Payna Chettiar v Maimoon bte Ismail & Ors*** [1997] 3 SLR 387 at 397).

55 Having reviewed all the authorities, and considered all the arguments, I am of the view that the question whether the principles of natural justice apply to the plaintiff's contract of employment, would depend upon the question whether the provisions in the personnel procedure manual applied to the plaintiff's contract of employment. These inter-linked questions could not be disposed of without regard to the attendant facts and in my view, ought to be decided at the trial of the action in the context of available evidence. However, in relation to the second question submitted to the court below, ie, whether any relief for reinstatement may be claimed by the plaintiff, the law in this regard seems to have been conclusively settled by the Singapore Court of Appeal in ***Lim Tow Peng***, that power to reinstate a dismissed employee resides only with the Minister under s 14 of the Employment Act. As regards ancillary prayer (3), the relief as to loss of salary, this matter also, in my view cannot be disposed of summarily without hearing evidence.

56 For the reasons I have given, I allowed the plaintiff's appeal and ordered:

(a) That the first question be determined by the trial judge at the hearing of the case and consequently the order below to strike out prayer 11(1) be set aside;

(b) The order by the court below as regards prayer 11(2) to remain, without prejudice to whatever reliefs the trial court may order under prayer 11(7) of the statement of claim;

(c) The order by the court below to strike out prayer 11(3) is set aside; and

(d) The costs of this appeal and costs below be costs in the cause.

Order accordingly

Sgd:

MPH RUBIN

Judge