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Re. CHANDRIKA PRASAD

(Supreme Court—Kermode, J.—16 November 1981)

Civil Jurisdiction

B

Public Service—Prosecution for Perjury—acquittal—further charges pursuant to Public Service Act—dismissal—Appeal to Public Service Appeal Board withdrawn—Application for certiorari to quash decision to dismiss—availability of disciplinary proceedings after acquittal.

C

K. Chauhan for the Applicant
M. F. Rutter for the Respondent

Application for a writ of certiorari to quash the decision of the Public Service Commission to dismiss the applicant from his appointment as a civil servant.

D

The applicant had the appointment of Sheriff's Officer at the Magistrate's Court in Labasa.

On or about the 30 March, 1981 the applicant was called to appear before the Magistrate at Labasa and examined on oath in the presence of one Mool Chand, the defendant. in Maintenance Case No. 30 of 1977.

E

The purpose of the examination of the applicant was apparently to ascertain whether the applicant had defaulted in carrying out his duties as a Sheriff's Officer by failing to execute Warrant No. 18 of 1978 against the said Mool Chand in respect of the said Maintenance Action. Mool Chand had apparently made certain allegations in Court regarding non-execution of the warrant.

F

On 2 July 1981, the applicant was interviewed and questioned by the Police in Labasa concerning answers he had given to the Magistrate on the 30 March 1981. The Labasa Police was enquiring about the matter at the request of the Chief Registrar of the Supreme Court. This request followed the forwarding by the Chief Magistrate of the Labasa Magistrate Court file in Maintenance Case No. 30 of 1977 to the Chief Registrar.

G

On or about 24th August, 1981, the applicant was charged by the Police with three counts of perjury arising out of what he had said on oath to the Magistrate on the 30th March, 1981.

H

On or about 16 September 1981 the applicant was interdicted from his duties.

- A On 30 October 1981, after a trial, the applicant was found guilty of all three counts of Perjury.

The applicant successfully appealed to the Supreme Court and his convictions were quashed. One of the reasons for allowing the appeal was that the applicant was not a witness in the Maintenance Action and could not be found guilty of Perjury. His interdiction was lifted on 24 February 1982.

- B On 14 March 1982, he was interdicted again and disciplinary proceedings under Regulation 22 of the Public Service Commission (Constitution) Regulations were commenced against him.

- C The applicant was charged with four disciplinary offences all stated to be offences within the meaning of Sections 12(b) and 12(i) of the Public Service Act.

- D He denied the charges but on 21 April 1980 the Public Service Commission dismissed him with effect from 11 March 1982. On 11 June 1982 he appealed to the Public Service Appeal Board (PSAB) and the appeal was set down for hearing on 9 August 1982. Counsel who appeared for him then was informed by the Chairman of the Public Service Appeal Board that it proposed to deal with the appeal by way of rehearsing. Counsel objected, contending that the very basis of the appeal was to challenge the laying of any further charges after the applicant had been acquitted by the court of competent jurisdiction of charges preferred against him. Counsel relied on Regulation 25(2) of the Public Service Commission (Constitution) Regulations.

- E Counsel after making his objection withdrew the appeal and instituted these proceedings. He also sought reinstatement of the applicant and other orders.

The sole issue before the Court was whether disciplinary proceedings could lawfully be brought against an employee who had been charged with and acquitted of criminal offences relating to or arising out of failure by the applicant to execute the warrants.

- F The case of *Josaiia Daugunu v. Attorney-General and Public Service Commission* (25 FLR) distinguished.

- G Applicant in the instant case was acquitted of Perjury. Two of the four charges preferred against him by the Chief Registrar appeared to be framed so as to allege similar untrue facts to those which the applicant may have stated to the Magistrate.

Held: Where an employee is charged with an offence against the law, and the disciplinary procedure has not been invoked, although the matter has as in the present case, been reported to the police, the Commission is not precluded from proceeding against him for a disciplinary offence under S.12 of the Act notwithstanding that he was acquitted by the Court of the criminal offence.

- H The charges now brought against applicant were not based on the same facts giving rise to the charge of Perjury.

There were several reasons why applicant could not succeed:

1. The legislature had provided procedures intended to be followed. S.14 of the Act provides for an appeal in terms indicating that there is to be no appeal to any court except on the ground of lack of jurisdiction. By withdrawing his appeal and coming to the Court, applicant had bypassed the statutory appeal procedure. A
2. Granting of the remedies the applicant sought was discretionary. Relief should not be granted in the circumstances. B
3. The laying of charges by the Chief Registrar and the decision of the Commission are not 'wrongful and erroneous in law'.
4. The prior acquittal of the applicant on charges of Perjury did not prevent the laying of disciplinary charges against the applicant under S.12 of the Act. C

the Court observed—

If an employee is acquitted of an offence involving dishonesty, common sense and a sense of fair play should dictate that a man should not be charged with a disciplinary offence arising out of the same facts which rely on the establishing that the offender had been dishonest. D

Application dismissed.

Cases referred to:

Josaia Daugunu v. Attorney-General and Public Service Commission (25 FLR 24)
R. v. Hogan and Thomkins (1966) 44 Cr. App. 255. E

KERMODE. Mr Justice

Judgment

The applicant at all relevant times was a civil servant employed as a Sheriff's Officer at the Magistrate's Court Labasa. F

On or about the 30th March, 1981, the applicant was called to appear before the Magistrate Labasa and examined on oath in the presence of one Mool Chand, the defendant in Maintenance Case No. 30 of 1977.

The purpose of the examination of the applicant was apparently to ascertain whether the applicant had defaulted in carrying out his duties as a Sheriff's Officer by failing to execute Warrant No. 18 of 1978 against the said Mool Chand in respect of the said Maintenance Action. Mool Chand had apparently made certain allegations in Court regarding non-execution of the warrant. G

On the 2nd July, 1981, the applicant was interviewed and questioned by the Police in Labasa as to the truth or otherwise of the answers he had given to the Magistrate on the 30th March, 1981. The Labasa Police were enquiring about the matter at the request of the Chief Registrar of the Supreme Court. This request followed the forwarding by the Chief Magistrate of the Labasa Magistrate Court file in Maintenance Case No. 30 of 1977 to the Chief Registrar. H

A On or about 24th August, 1981, the applicant was charged by the Police with three counts of perjury arising out of what he had said on oath to the Magistrate on the 30th March, 1981.

On or about the 16th September, 1981 the applicant was interdicted from his duties.

B On the 30th October, 1981, after a trial, the applicant was found guilty of all three counts of perjury, convicted and sentenced to 30 months imprisonment on each count to be served concurrently.

The applicant successfully appealed to the Supreme Court and his convictions were quashed. One of the reasons for allowing the appeal was that the applicant was not a witness in the Maintenance Action and could not be found guilty of perjury. His interdiction was lifted on the 24th February, 1982.

C On the 14th March, 1982, he was interdicted again and disciplinary proceedings under Regulation 22 of the Public Service Commission (Constitution) Regulations were commenced against him.

The applicant was charged with four disciplinary offences all stated to be offences within the meaning of sections 12(b) and 12(i) of the Public Service Act.

The four charges preferred against the applicant were as follows:

D *Charge 1*
Chandrika Prasad, you are charged that whilst employed in the Public Service of the Government of Fiji as a Sheriff's Officer you did commit a disciplinary offence within the meaning of sections 12(b) and 12(i) of the Public Service Act 1974 in that you wilfully and persistently failed to execute Warrant No. 18/78 over a period unknown prior to 1.5.78.

E *Charge 2*
Chandrika Prasad, you are charged that on about the 1st day of May 1978, whilst employed in the Public Service of the Government of Fiji as a Sheriff's Officer you did commit a disciplinary offence within the meaning of sections 12(b) and 12(i) of the Public Service Act 1974 in that, you returned as unexecuted Warrant No. 18/78—Maintenance Case 30/77—Mool Chand (s/o Ram Dass)—to the Magistrates Court Registry, Labasa, having endorsed thereon a statement which you knew to be false namely that you could not locate the Respondent—the said Mool Chand.

G *Charge 3*
Chandrika Prasad, you are charged that whilst employed in the Public Service of the Government of Fiji as a Sheriff's Officer you did commit a disciplinary offence within the meaning of sections 12(b) and 12(i) of the Public Service Act 1974 in that, having on 31.8.78 being charged with the execution of Warrant No. 182/78—Maintenance Case 30/77—Mool Chand (s/o Ram Dass)—you wilfully and persistently failed to execute the same between the period of 31.8.78 and 31.1.79 inclusive.

H *Charge 4*
Chandrika Prasad, you are charged that on 30.3.81, whilst employed in the Public Service of the Government of Fiji as a Sheriff's Officer you did commit a disciplinary offence within the meaning of sections 12(b) and 12(i) of the Public Service Act 1974 in that you knowingly and falsely swore that you had been unable to find the respondent (Mool Chand (s/o Ram Dass)) and that the said respondent had never worked for you."

A The applicant denied the charges but on 21st April, 1980 the Public Service Commission decided to dismiss him and he was dismissed with effect from 11th March 1982.

The applicant appealed to the Public Service Appeal Board on the 11th June 1982, and the appeal was set down for hearing on the 9th August, 1982.

B On that date the applicant was represented by Mr Chauhan. Mr Chauhan was informed by the Chairman of the Board that the Board proposed to deal with the appeal by way of rehearing the whole case.

Mr Chauhan objected to any rehearing on the ground that the very basis of the appeal was to challenge the laying of any further charges, disciplinary or otherwise, after the applicant had been acquitted by a court of competent jurisdiction of charges preferred against him. Mr Chauhan purported to rely on Rule (2) of Regulation 25.

C In his affidavit the applicant refers to Rule (2) of Regulation 25 of the Public Service Commission (Statutory) Regulations. There are only 23 Statutory Regulations but there is a Regulation 25 in the Public Service Commission (Constitution) Regulations which is the Regulation to which the applicant must be referring and which I will refer to later.

D Mr Chauhan, after registering his objection with the Board, withdrew the appeal and instituted these proceedings seeking an order of certiorari to quash the decision of the Commission to dismiss the applicant. He also seeks reinstatement of the applicant and a declaration that the decision of the Commission was wrongful and erroneous in law and seeking damages.

E There is no suggestion that there has been any failure by the Chief Registrar or the Commission to follow the disciplinary procedure provided by the regulations.

The sole issue before me is a legal one and that is whether disciplinary proceedings can lawfully be brought against an employee who has been charged with and acquitted of criminal offences relating to or arising out of failure by the applicant to execute two warrants.

F Mr Chauhan relies on my decision (25 FLR) *Josaia Daugunu v. Attorney-General and Public Service Commission*. In that action I made the following comments:

"Specifically under Regulation 25 it is provided that nothing in Regulation 22 shall apply to any action taken under Regulation 25.

G Regulations 24 and 25 satisfy me that the Commission in making the regulations never intended that a person acquitted by a court of competent jurisdiction should be proceeded against again on a charge arising out of the same facts and on further inquiry punished if the Commission considered the charge was true."

H In *Daugunu's* case disciplinary proceedings were brought against him under Regulation 22. The Permanent Secretary on viewing the facts, considered that an offence against the law might have been committed by Daugunu and under Regulation 24 he was obligated to refer all relevant papers to the police. He did so. The police prosecuted but Daugunu was ultimately acquitted. The Commission then

decided to proceed with one of the disciplinary charges originally preferred against him. I held in that case that the Commission had in the Regulations provided a procedure it was bound to follow. Regulation 24(2) prevented the Commission from pursuing any inquiry into the disciplinary offences prepared against Daugunu while the Police were investigating the matter. If the Police decided that no prosecution should take place the Commission had then to decide whether or not a disciplinary inquiry into the offences should be held.

Nowhere in the regulations, however, is there any provision providing for the inquiry to be held where an employee has been acquitted by a court after disciplinary proceedings have been commenced against him and pursuant to the regulation the matter is reported to the police who decide to prosecute.

There is provision in Regulation 25 which covers the situation where an employee, whether interdicted or not, is charged with any offence punishable by imprisonment for a term of one year and upward and is convicted of that offence. He may be transferred to other duties or interdicted from duty on being charged.

If the employee is convicted of such an offence the Commission may forthwith dismiss him. Alternatively he may be deemed to have committed an offence under section 12 of the Act and punished without any further reference to Regulation 22 but in such an event the Commission cannot dismiss him.

When the applicant was first interdicted, the Chief Registrar was acting pursuant to Regulation 25. He was not however charged with a disciplinary offence pursuant to Regulation 22 at that time.

Regulation 25(2) which Mr Chauhan relies on does not have the effect he alleges. It states:

"(2) Nothing in Regulation 22 shall apply with respect to any action under this regulation."

This provision does not operate to prevent the Commission proceeding against an employee where he has been acquitted by the Court of an offence. It operates merely to make the provisions in Regulation 22 not applicable where the employee is concerned. He may, *ipso facto* on being convicted, be dismissed forthwith by the Commission without any further charges being preferred against him or following any of the procedure provided in Regulation 22 as I earlier mentioned he may be deemed to have committed an offence under Section 12 of the Act but in such a case he cannot be dismissed.

The quoted statement from *Daugunu's* case is related to the disciplinary procedure in Regulation 22 and I expressed my views as to why I considered the Commission had in its rules, after charges had been preferred, provided for all situations but the situation where it had reported the matter to the police and the employee had been charged and acquitted. I held that Regulations did not enable them to take further proceedings against Daugunu on charges arising out of the facts on which he was originally charged.

The statement was not intended to debar the Commission from taking disciplinary proceedings against an employee for any offence under Section 12 of the Act, which was not also an offence under the law arising out of the facts which may have given rise to his prosecution where the disciplinary procedure had not already been invoked.

A The quoted statement from *Daugunu's* case cannot be relied on in the instant case for the reason that the facts in *Daugunu's* case were quite different.

B In that case disciplinary charges have been preferred against him but on the Permanent Secretary reviewing the facts the matter was referred to the Police. The subsequent conviction or acquittal terminated all charges preferred against him under the Regulations. In the instant case, however, the matter was referred to the police before any disciplinary charges were laid. Disciplinary charges were laid after the applicant was acquitted of criminal offences and the Regulations were then brought into operation for the first time.

C Where an employee is charged with an offence against the law, and the disciplinary procedure has not been invoked, although the matter has, as in the present case, been reported to the police, the Commission is not precluded from proceeding against him for a disciplinary offence under Section 12 of the Act notwithstanding that he is acquitted by the Court of the criminal offence.

D What the Commission should not do, after an acquittal, is to frame charges against the employee based on the same facts which gave rise to his prosecution.

E The applicant in the instant case was acquitted of perjury, that is an offence in laymans language of telling lies on oath. Two of the four charges preferred against the applicant by the Registrar appear to be framed so as to allege similar untrue facts to those which the applicant may have stated to the Magistrate.

F Basically what the applicant was alleged to have done was to wilfully fail to execute Warrants 18/78 and 178/78. The Chief Registrar should not have been concerned about any lies he may have told the Magistrate but whether the facts established the charges. This involved the Commission being satisfied he did not execute the warrants when he could and should have done so.

G I appreciate that the Commission may well have considered that the applicant was acquitted on a technicality. The Commission may have believed that the applicant had lied to the Magistrate because the Magistrate found as a fact that he had done so.

H I do not consider the charges were based on the same facts giving rise to the charges of perjury but references on those charges to dishonest statements by the applicant are highly prejudicial and were quite unnecessary to describe the offences. Two separate disciplinary offences are included in each charge and are not stated to be in the alternative.

While I have criticised the charges I am not called on to make any ruling regarding them.

I There are several reasons why the applicant cannot succeed.

One reason, but not the major one, is that the legislature provides a procedure which is intended to be followed. Section 14 of the Act provides for an Appeal in terms which indicates that there is to be no appeal to any Court except on the ground of lack of jurisdiction other than want of form. Subsection (11) of section 14 provides:

J "(11) Proceedings before the Appeal Board shall not be held bad for want of form. No appeal shall lie from any decision of the Appeal Board, and, except on the ground of lack of jurisdiction other than for want of form, no proceedings of decision of the Appeal Board shall be liable to be challenged, reviewed, quashed, or called in question in any Court."

By withdrawing his appeal and coming to this Court the applicant has bypassed the statutory appeal procedure. This Court can on appropriate cases, notwithstanding Section 14(11), consider an Appeal from the Appeal Boards decision. A

The granting of the remedies he seeks is discretionary and quite apart from consideration of the merits of his application I would not in the circumstances grant him any relief.

The major reason however, is that the laying of charges by the Chief Registrar and the decision of the Public Service Commission are not "wrongful and erroneous in law". B

The prior acquittal of the applicant on charges of perjury did not prevent the laying of disciplinary charges against the applicant under Section 12 of the Act.

In Daugunu's case I referred to the case of *R. v. Hogan & Thompkins* (1966) 44 Cr. App. 255, where it was held that prior punishment by Visiting Justices under the Prison rules 1949 was no bar to a subsequent conviction of prison breach. The Court then said the Justices could have dealt with the breach of discipline even after the appellant had been convicted at assizes. No doubt both Justices and the Court would in meting out punishment take into account punishment that had already related to the same facts been imposed on the offender for an offence. C

Further disciplinary action after a Court had dealt with a major offence, where no prior disciplinary charges have been laid against an employee, should be dictated by common sense and a sense of fair play. If an employee is acquitted of an offence involving dishonesty, common sense and a sense of fair play should dictate that the man should not be charged with a disciplinary offence arising out of the same facts which relies on establishing that the offender had been dishonest. He could however legally be disciplined for an offence under Section 12 of the Act. Whether such disciplinary charges are preferred after he is acquitted by the Court is a matter of judgment. The question of punishment might take into account what he had gone through in meeting the criminal charges. D E

The application is dismissed. I do not consider this is a case where costs should in the circumstances be awarded against the applicant. F

Application dismissed.