1931
Jan. 12.
Jan. 17.

ROSCOE R. MILLER.....SUPPLIANT;

vs.

HIS MAJESTY THE KING.....RESPONDENT.

Superannuation—Civil Service—Crown—Contract—Discretion—Jurisdiction of court

Held, that a civil servant, retired or removed from office, has no right of action to recover any allowance under the Superannuation Act, such allowance being entirely in the discretion of the executive authority. That no contractual relationship arises between the Crown and its servants with respect to such allowances. To create such contractual relationship would require express statutory enactment.

PETITION OF RIGHT to have it declared that the superannuation allowance given the suppliant herein was wrongly calculated, was too small, and should be increased, and further for damages.

The petition was heard before the Honourable Mr. Justice Audette at Ottawa.

Mr. R. R. Miller appeared personally.

C. P. Plaxton, K.C., for respondent.

The facts are stated in the reasons for judgment.

AUDETTE J., now (January 17, 1931), delivered judgment.

The suppliant having entered the federal civil service and served therein for a period of twelve years and eight months, and his position having been abolished, he was retired from the service, under the authority of an Order in Council, and his "name was placed on the list of persons eligible for the class of positions from which he was laid off or for any other position for which he may have qualified." 10 Geo. V, ch. 10, sec. 5; now R.S.C., 1927, ch. 22, sec. 54. Furthermore, by Order in Council, he was granted, under 14-15 Geo. V, ch. 69, a pension or annual retiring allowance of $499.57.

He therefore claims a larger pension and concludes his petition by praying that:—

1. That this Honourable Court may, definitely, fix and determine the proper amount of "retiring allowance," to which your suppliant has been, is at present, and, will be entitled, in future, calculated at $2,800 per annum;

2. That this Honourable Court may definitely fix and determine the amount of arrears to which your suppliant is entitled, in respect to the said annual "retiring allowance," believed to amount to the sum of $8,051.50, as of October 1st next; and, that it may order payment thereof, to your suppliant, forthwith; and,

3. That this Honourable Court may fix and determine the amount of relief to which your suppliant is entitled, in consequence of maladministration of federal public services, resulting in damages estimated to amount to $100,000, and calculated as follows, viz,—

(*a*) Prescriptive earning capacity	$60,000
(*b*) Menial services	10,000
(*c*) Forcible ejection from office	10,000
(*d*) Damages to health	20,000

It may be said here, but not as determining the issue herein, that the suppliant has failed to prove the material allegations of his petition.

However, the paramount question to be determined is as to whether or not this Court has jurisdiction, in a case of this kind, to review the decision of the Governor in Council with respect to such allowance.

In the case of *Balderson* v. *The Queen* (1), (and cases therein cited), it was held that employees retired or removed from office have no absolute right to any superannuation allowance under the Act, such allowance being entirely in the discretion of the executive authority. The Courts have persistently adhered to the view that no contractual relation arises between the Crown and its servants with respect to superannuation allowances, unless some statute expressly creates such a relationship and so far Canada has not made such change in the law.

This decision of our Canadian Courts must be taken as conclusive of the whole matter; but it may be useful to mention the following decisions in the English Courts.

The case of *Nixon et al* v. *The Attorney-General* (2) recently decided by the House of Lords, holds also that a civil servant's expectation of superannuation allowance is not a legal right and cannot be enforced by legal proceedings.

It was further held in the case of *Denning* v. *The Secretary of State for India* (3), that a Crown servant, against whom no misconduct is alleged, is liable to dismissal at the

(1) (1897) 6 Ex. C.R. 8, confirmed on appeal to the Supreme Court of Canada, 28 S.C.R. 261.

(2) (1930) 47 T.L.R. 95.

(3) (1920) 37 T.L.R. 138.

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pleasure of the Crown without notice, even if the form of agreement under which he has been engaged implies that, except in case of misconduct, the engagement can be terminated only by notice.

In the case of *Yorke* v. *The King* (1), it was also held that under the Superannuation Act the decision of the Commissioner of the Treasury either as to whether a person is entitled to a superannuation allowance or as to the basis upon which an allowance shall be calculated, is final, and no Court of law has jurisdiction in the matter.

See also *Cooper* v. *The Queen* (2).

In the case of *Hales* v. *The King* (3), it was held that the principle that a servant of the Crown is liable to be dismissed at pleasure is not affected by any special contract unless such contract is incorporated in a statute.

There will be judgment declaring that this Court has no jurisdiction to review the decision of the Governor in Council when exercising his statutory discretion with respect to any superannuation allowance. Therefore this Court does order and adjudge that the suppliant is not entitled to the relief sought by his Petition of Right herein.

Judgment accordingly.