SUPREME COURT.

U MYA (APPLICANT)

v.

U TUN OHN AND ONE (RESPONDENTS).*

† S.C.
1948
July 23.

Writ of certiorari—*Dismissal of an Engineer by the Corporation of Rangoon under s. 34 of the City of Rangoon Municipal Act whether judicial or quasi-judicial—Whether writ of* certiorari *the proper remedy.*

Held: That the dismissal of an Engineer by the Administrator of the Corporation was not a judicial act for which the writ of *certiorari* could be issued. If the dismissal be wrongful the remedy of the party is by a suit for damages.

A. E. Madari v. *U Tun Ohn and one*, (1948) Bur. L.R. 541, followed.

Dr. Thein for the applicant.

Kyaw Din for the respondents.

The judgment of the Court was delivered by

E MAUNG, J.—The remedies originally sought on behalf of the applicant in these proceedings were for directions in the nature of *certiorari* and *mandamus.* The applicant's case shortly is that the 1st respondent U Tun Ohn's action in dispensing with his services as an Assistant Engineer (Buildings) in the City of Rangoon Municipal Corporation was one not made in due course of law and further that U Tun Ohn had no authority to act as the Administrator and on behalf of the City of Rangoon Municipal Corporation. He prayed therefore, in the first instance, that the proceedings ending with his services being dispensed with be quashed in exercise of the powers of *certiorari* and also for the issue of directions in the nature of *mandamus* requiring the 1st respondent to

* Civil Misc. Application No. 7 of 1948.

† *Present:* SIR BA U, Chief Justice of the Union of Burma, E MAUNG, J., and KYAW MYINT, J., of the Supreme Court.

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permit him to return to duty as an Assistant Engineer in the City of Rangoon Municipal Corporation.

The application also mentions casually relief by way of prohibition, but that was obviously the result of a misappreciation of what directions in the nature of prohibition mean. This branch of the application was, however, never pressed either at the hearing in chambers or before the Court.

The application in respect of directions in the nature of *mandamus* was refused by the Judge in Chambers under Order XXI, Rule 2 of the Rules of this Court. Section 45 of the Specific Relief Act provides a sufficient remedy which the applicant could have sought instead of applying to this Court for directions in the nature of *mandamus*. Accordingly, at the hearing before the Court the only relief sought was for directions in the nature of *certiorari*.

The facts necessary for the determination of this application are not in dispute. The applicant was a permanent servant of the City of Rangoon Municipal Corporation, being an Assistant Engineer at the time his services were dispensed with by the 1st respondent. It is also not in dispute that prior to dispensing with the services of the applicant no departmental enquiry had been held into the charges of carelessness and negligence in the discharge of his duties by the applicant. It is on these facts that the applicant claims that he is entitled to relief by way of directions in the nature of *certiorari*.

The case put before the Court on behalf of the applicant by his learned counsel is, firstly, that U Tun Ohn is not in law the Administrator of the City of Rangoon Municipal Corporation and that therefore he cannot act on behalf of the said Corporation in determining the services of the applicant. Secondly, it was said on his behalf that, if U Tun Ohn was

lawfully appointed an Administrator and therefore capable of acting on behalf of the City of Rangoon Municipal Corporation he was bound in law to hold a departmental enquiry before finding the applicant guilty of carelessness or negligence in the discharge of his duties. Under the second branch of his case, U Thein for the applicant claims that U Tun Ohn must be deemed to be acting in a quasi-judicial capacity and that therefore he would be amenable to the jurisdiction of this Court exercising its powers of *certiorari*.

In claiming that U Tun Ohn was not at the relevant date the lawful Administrator of the City of Rangoon Municipal Corporation the learned counsel for the applicant relies on section 222 (1) of the Constitution. It was contended by him that the Municipal Corporation of the City of Rangoon (Suspension) Act, 1943, ceased to be an "existing law" within the meaning of the Constitution, and that therefore U Tun Ohn, since the 4th January 1948 at any rate, could not continue to act as Administrator and on behalf of the City of Rangoon Municipal Corporation. A similar contention was raised in Civil Miscellaneous Application No. 5 of 1948 *U Htwe* (a) *A. E. Madari* v. *U Tun Ohn and one* (1) but was rejected by this Court. For reasons given in that case it must be held that U Tun Ohn, who was prior to the 4th January 1948, duly appointed the Administrator of the City of Rangoon Municipal Corporation, remains to this date the lawful holder of that office.

The next point that arises for consideration is whether U Tun Ohn, in dispensing with the services of the applicant, can be said to be acting in a quasi-judicial capacity so as to attract the exercise of *certiorari* by this Court. In Civil Miscellaneous Application No. 5 of 1948, referred to above, the question when a person or a body of persons can be said to act in a judicial or

(1) (1948) Bur. L.R. 541.

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quasi-judicial capacity has been considered at length and it is not necessary here to go into the matter again. It would, for the purposes of the present case, be sufficient to say that the applicant was a municipal officer who under section 34 of the City of Rangoon Municipal Act could be " suspended or dismissed . . . . . for any breach of departmental rules or discipline or for carelessness, incompetence, neglect of duty or whether misconduct, by the authority by whom such officer or servant is appointed." The power of dismissal under section 34 appears to be absolute though it is true certain rules have been made by the Government under the provisions of section 235 (vi) (*c*) of the Act. It is very difficult to see how U Tun Ohn as Administrator of the City of Rangoon Municipal Corporation dismissing a municipal servant for what he considers to be the latter's carelessness or negligence differs in any way from the same U Tun Ohn in his personal capacity dismissing a private servant for a similar ground. In either case it is true that if he was not justified in summarily dismissing the servant, he would lay himself open to a suit for damages. To that extent no doubt the employer, whether he be a public servant or a private citizen, is bound to act according to the law; but we fail to see that the duty of the employer to act according to the law extends further than this.

In any case, if the applicant's claim on the merits are substantiated he has a complete remedy for wrongful dismissal against either the 1st respondent or the 2nd respondent or possibly against both. That remedy would be more substantial than any remedy by way of *certiorari*.

The application stands dismissed and the rule *nisi* will stand discharged. The applicant will pay the costs of this application. Advocate's fee five gold mohurs.