

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of James
Leslie Williams v. Haines Thomas Giddy,
from the Supreme Court of New South Wales ;
delivered the 4th April 1911.*

PRESENT AT THE HEARING :
LORD MACNAGHTEN.
LORD MERSEY.
LORD ROBSON.
SIR ARTHUR WILSON.

[DELIVERED BY LORD MACNAGHTEN.]

The Respondent Giddy, who was Plaintiff in this action, was an employee in the public service of the State of New South Wales. He entered the service on the 9th of December 1875. He retired after thirty years' service on the 16th of September 1905.

On his retirement, in accordance with the provisions of section 4 of the Public Service Superannuation Act, 1903, he became "entitled to a gratuity not exceeding one month's pay for each year of service from the date of his permanent employment." The gratuity in the words of the enactment was "to be calculated on the average of his salary during the whole term of his employment and to be payable . . . in the case of . . . retirement after the commencement of the Public Service Act, 1902, only in respect of service prior to such commencement."

The average of the Plaintiff's salary during the whole term of his employment was found to be 23*l.* 10*s.* 1*d.* per month.

On his retirement the Public Service Board awarded him a gratuity or allowance of 454*l.* 11*s.* 1*d.* In arriving at this sum, the Board reckoned his service up to the 23rd of December 1895, but no longer. Under the Act of 1903 he claimed to have his service reckoned up to the 16th of August 1902, the date of the commencement of the Public Service Act, 1902. He was officially informed by letter from the Crown Solicitor, dated the 6th of July 1908, that in respect of that claim no further sum could be paid. Subsequently, however, the Public Service Board professed to take his claim into consideration. But instead of awarding a gratuity or allowance calculated on a salary of 23*l.* 10*s.* 1*d.* per month, they struck off the pounds, they struck off the shillings, and they allowed him just one penny for each year of service subsequent to the 23rd of December 1895, or sevenpence in all. An award so contemptuous on the face of it seems to import incapacity of some sort on the part of a civil servant thus remunerated or disparaged. There was nothing of the kind. The learned Counsel for the Appellant hastened to disclaim any intentional slur on the Plaintiff's conduct. No fault was to be found with the manner in which he had discharged his duties.

So the Plaintiff brought this action to recover the sum of 139*l.* 19*s.* 2*d.*, which would have been the amount of the additional allowance at the full rate of 23*l.* 10*s.* 1*d.* for each year of additional service.

A Special Case was settled by direction of the Judge, stating the following questions for the opinion of the Court :—

“ (1.) Whether the Plaintiff's service, in respect of which the gratuity is payable, should be computed up to the 23rd of December 1895 or the 16th of August 1902 ?

“ (2.) Whether, if the said gratuity is payable in respect of services between the 23rd of December 1895 and the

“ 16th of August 1902, the said Government is entitled to
 “ assess the gratuity payable in respect of the said service
 “ at the sum of sevenpence ? ”

And the Special Case provided that if the Court should be of opinion that the gratuity was payable in respect of the whole of the service prior to the 16th of August 1902, and that the Government were not entitled to assess the gratuity payable for service subsequent to the 23rd of December 1895 at sevenpence, judgment should be entered for the Plaintiff for 139*l.* 19*s.* 2*d.*, with costs.

The Special Case came on to be heard in the Supreme Court before Simpson, acting C.J., and Cohen and Pring, JJ. All the learned Judges were of opinion that the first question must be answered in favour of the Plaintiff. On the second question there was a difference of opinion. Simpson, A.C.J., and Cohen, J., thought that it could not “ be successfully contended that “ the Government have any right to depart from “ what they have deliberately done in respect of “ the Plaintiff’s service up to the 23rd of December “ 1895, and to exercise another and different “ discretion by allowing him sevenpence only as “ a gratuity for his subsequent service.” Pring, J., on the other hand, was of opinion that the Court could not interfere with the uncontrolled discretion of the Government, and that judgment should be entered for the Defendant.

Before this Board the ruling of the Supreme Court on the first question was not challenged.

On the second question their Lordships agree in the conclusion at which the majority of the Court arrived. But they are not prepared to hold that the Government were precluded from exercising their discretion by the action which they took at the time when it was considered that the Plaintiff was not entitled to claim in respect of service subsequent to the 23rd of December 1895.

The real question seems to be this :--Did the Government, or rather did the Public Service Board, in whose province the matter lay, exercise any discretion at all as regards the Plaintiff's claim in respect of service subsequent to the 23rd of December 1895? They have awarded seven pennies for seven years' employment, or to be quite accurate, they have awarded one farthing for every quarter of a year spent in the service of the Government, and they have thrown in an extra farthing to make even money. Well, this is not the first occasion on which seven years faithful service has met with a recompense at once unexpected and undesired. That is probably the best that can be said for the action of the Board. But was it reasonable? Was it fair? Few would deem it a generous or handsome tribute to the work of an old and faithful servant even with the extra farthing thrown in. Plain folk would call it a mockery--a sham--a pretence. Nobody, of course, can dispute that the Government or the Board had a discretion in the matter. But it was not an arbitrary discretion as Pring, J., seems to think. It was a discretion to be exercised reasonably, fairly, and justly. The learned Counsel for the Appellant, who were not apparently in the secrets of the Government, seemed to think that the Board would have stood better in Court if they had not resorted to the artifice of a pretended exercise of discretion. It was suggested that the Board may have thought that the Plaintiff had got enough already, and that perhaps on the former occasion they took into consideration years of service beyond the limit which they thought applicable. But, if so, they did unintentionally the very thing they were told by the Act not to do. They can hardly be heard to say that they have erred intentionally in order to conceal or compensate an

unintentional error. Whatever their motive may have been, whether they were resolved, right or wrong, to stick to a determination once officially announced, and to let the Service understand that nothing was to be gained by asking for a reconsideration of an erroneous decision, or whether they had some better reason which has not yet been disclosed or discovered, it seems to their Lordships to be quite plain that an illusory award such as this—an award intended to be unreal and unsubstantial—though made under guise of exercising discretion, is at best a colourable performance, and tantamount to a refusal by the Board to exercise the discretion entrusted to them by Parliament.

Holding therefore, as they do, that the Government were not entitled to assess the gratuity payable to the Plaintiff in respect of service between the 23rd of December 1895 and the 16th of August 1902 at the sum of seven pence, their Lordships think that in accordance with the provisions of the Special Case judgment should be entered for the Plaintiff for 139*l.* 19*s.* 2*d.*, with costs. They will humbly advise His Majesty accordingly.

The Order giving special leave to appeal provided for the Plaintiff's costs of the Appeal as between solicitor and client. But as there is no appearance on the part of Plaintiff, the Order will be silent as to costs.

In the Privy Council.

JAMES LESLIE WILLIAMS

v.

HAINES THOMAS GIDDY.

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