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# Tenure and Remedies Under School Teachers' Contracts - Board of Education of Washington County v. Cearfoss

## TENURE AND REMEDIES UNDER SCHOOL TEACHERS' CONTRACTS

***Board of Education of Washington County v. Cearfoss.***[1]

Plaintiff was employed on July 1, 1921 as a school teacher by the defendant school board under a uniform state-wide contract adopted by the State Board of Education in pursuance of power delegated to it by the legislature.[2] This contract provided that either party could "terminate it at the end of the first or second school year by giving thirty days notice in writing to the other during the month of June or July". Further provisions specified that the contract should continue from year to year subject only to the right of the County Board to dismiss the teacher for cause shown as governed by Art. 77 Sec. 86,[3] in which case the teacher would have the right to appeal to the State Superintendent if the decision of the County Board were not unanimous. The school board refused to reassign the teacher on June 30, 1930 without cause being shown. In the first case a demurrer to the declaration in the action to recover for breach was over-

[1] 168 Md. 34, 176 Atl. 48 (1934); same case on earlier appeal, 165 Md. 178, 166 Atl. 732 (1933). Although the cases involved three plaintiffs, the case is considered as if only one were involved as the facts and holding pertaining to each are similar.

[2] Md. Code, Art. 77, Sec. 11.

[3] "Any county board of education may, on the recommendation of the county superintendent, suspend any teacher, . . . for immorality, dishonesty, intemperance, insubordination, incompetence, or wilful neglect of duty . . ."

ruled. This ruling was sustained on appeal, and the Court affirmed the judgment for damages given by the trial court.[4] The second and instant case concerns a subsequent suit by the same teacher on the same contract for salary accruing from the date of the first judgment until the date of reemployment under a new contract although she had rendered no services during that period. By demurrer and special plea the defendant maintained that the former judgment was a bar to any future action. The overruling of the demurrer and plea was sustained on appeal. *Held,* There was no absolute power of recession vested in the school authorities, and, as the dismissal was not accompanied by a given reason and was without an opportunity to be heard, the continued refusal to appoint the teacher at the beginning of each year constituted successive breaches.

The principal case raises a master-servant problem concerning (a) The remedies open to a servant wrongfully discharged; (b) The amount of damages which may be recovered; (c) Defense of master based upon a prior adjudication on the same contract.

Maryland in line with the weight of authority,[5] definitely established, in *Keedy v. Long,*[6] two forms of remedies open to a servant who has been wrongfully dismissed. These remedies can be more easily understood in the light of the facts of that case. The plaintiff was employed for a period of one year to teach music in a private institution. Her services commenced on September 6 and continued until October 28. Her salary had been paid to October 6. A few days after her discharge of October 28, she brought suit before a justice of the peace to recover on a quantum merit for her salary for the period of twenty days. A judgment for twenty days services was rendered and satisfied. Some months thereafter she sued for breach of the contract.

In denying further recovery, the court, in substance set forth the following rules. There are only two remedies open to a servant who has been wrongfully discharged. He may treat the contract as rescinded and sue on a quantum meruit for wages already due him, or he may treat the contract as a continuing one and sue for its breach. In the first type he may recover only for wages actually due him for services. In the second type, his recovery includes,

[4] 165 Md. 178, 166 Atl. 732 (1933).
[5] 34 C. J., p. 831.
[6] 71 Md. 385, 18 Atl. 704, 5 L. R. A. 759 (1889).

not only wages due, but also damages for the breach. If the servant elects to sue on a quantum meruit, he treats the contract as rescinded, and this will bar any subsequent action for its breach, which would be founded on the idea of continuance. If he sues for the breach, he cannot subsequently sue on a quantum meruit as this pre-supposes the total recession of the contract. Hence, it can readily be seen that the two remedies open to a servant are inherently different in theory. The quantum meruit is based upon the idea of recession; while the suit for breach is based upon the idea of continuance of the contract. A judgment under either of which will bar a subsequent action on the other.

The holding in the *Keedy* case was reaffirmed in *Olmstead v. Bach,*[7] where the plaintiff had been employed for one year at a fifty dollar weekly wage. At a time when his wages were paid in full, he was wrongfully dismissed. He recovered fifty dollars before a justice of the peace. Subsequently, he instituted another suit maintaining that recovery was merely for one week's wages which had accrued subsequent to his dismissal. The court held that as no wages were due at the time of his discharge, the suit before the justice of the peace could have proceeded under only one theory—namely, that the contract had been breached and suit was for damages therefor, and that that suit was a bar to any subsequent suit.[8]

Since, as has been pointed out, when no wages are due at the time of discharge and suit cannot therefore be brought on a quantum meruit, the plaintiff is limited to damages for the breach, the question arises as to the method of ascertaining these damages. This question must be answered according to the time at which suit is brought. Assuming that the action is brought immediately upon discharge, the damages as assessed for the entire term of employment must, of necessity, be conjectural. In *Hippodrome Company v. Lewis*[9] the court quoted *Chamberlin v. Morgan*[10] with approval. "In estimating the damages the jury have the right to consider the wages which he would have earned under the contract, the probability whether his life and that of the defendant would continue to the end of

[7] 78 Md. 132, 27 Atl. 501, 44 A. L. R. 273, 18 L. R. A. 53, 22 L. R. A. 74 (1893).

[8] Cases of this kind must be distinguished from those wherein the services are actually continued, and suit is brought at the end of each period when wages are due for those wages which have actually been earned during that period.

[9] 130 Md. 154, 100 Atl. 78 (1917).

[10] 68 Penn. St. 168 (1871).

the contract period, whether the plaintiff's working ability would continue to the end of the contract period, and any of the uncertainties growing out of the terms of the contract, as well as the likelihood that the plaintiff would be able to earn money in other work during the time. But it is not the law that damages which may be larger or smaller because of such uncertainties are not recoverable." If, however, the plaintiff should choose to wait until the term of employment has expired before bringing his suit, he will be entitled to his wages for the entire term less any amount he has earned or could have earned by the exercise of proper diligence in seeking similar employment.[11]

Clearly, unless the principal case can be distinguished from the Maryland cases considered above, the initial suit and judgment would be a bar to the instant suit. Without the aid of authority, however, the Court was able to make a distinction. In view of the fact that the contract was, unless terminated at the end of the second year, to continue from year to year subject only to the statutory causes of dismissal, the conclusion was reached that the refusal to reassign the teacher did not sever the relationship of the teacher to the school board, and the refusal at the beginning of each school year constituted a new breach for a distinct period of duty for which breach an action would lie. The Court in effect held that in the normal master-servant relationship, the master has the power to dismiss and thus terminate the contract, even though he be without legal right to do so; whereas, in the case of public school teachers employed under the uniform contract, the employer lacks *not only the legal right to discharge, but is also without the power to do so* unless such power is exercised in pursuance of the statute for cause shown. The Court was able to reach this result by considering the terms of the contract in relationship to the teacher Retirement System[12] which, taken together, showed an intent to establish a tenure relationship.

The soundness of the result, in the mind of this writer, is not open to question. The Court undoubtedly carried out the intent and policy established by and for the public school system of Maryland. In order to remove primary and secondary education from the realm of politics and to induce capable people to meet the legislative requirements for teachers' certificates and enter upon a life-long teach-

[11] *Supra* note 9, 130 Md. 157.
[12] Md. Code, Art. 77, Secs. 93-103.

ing career, the uniform contract was adopted. This offers to those successfully completing two years teaching a tenure relationship with the promise of retirement. The decision of the Court tends to uphold this educational policy. Any other result would, in effect, give the school board the power to force a teacher out of the system. The choice then open to the discharged teacher would be (1) to go hungry for five or ten years without any pay, or (2) to sue at once for breach of the entire contract and to recover a judgment barring any further recovery, which would terminate his connection with the school system. The whole theory of the statutes regarding teachers and the pension system is opposed to this idea that the school board has any such power. It should not have the power to force such a choice on a teacher.