Creary Vs. Weeks

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Court : US Supreme Court

Decided On : May-29-1922

Appeal No. : 259 U.S. 336

Appellant : Creary

Respondent : Weeks

Judgement :

Creary v. Weeks - 259 U.S. 336 (1922)
U.S. Supreme Court Creary v. Weeks, 259 U.S. 336 (1922)

United States ex Rel. Creary v. Weeks

No. 725

Argued April 20, 1922

Decided May 29, 1922

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ERROR TO THE COURT OF APPEALS

OF THE DISTRICT OF COLUMBIA

SYLLABUS

1. *French v. Weeks, ante,* 259 U. S. 326 , followed, to the effect that 24b of the Army Reorganization Act does not require personal and judicial action on the part of the President precedent to the final classification of an army officer as one to be retired or discharged from the Army. P. 259 U. S. 342 .

2. Section 24b of the Army Reorganization Act does not violate due process of law in not affording an officer who, after due hearing before a Court of Inquiry, has been classified by the Board of Final Classification as one who should not be retained in the service, a notice and a further hearing before the further determination, by another board, of the question whether the classification was due to his neglect, misconduct or avoidable habits, involving,

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if affirmative, his discharge from the Army or, if negative, his placement on the retired list at diminished pay. P. 259 U. S. 343 .

3. Proceedings of lawfully constituted military tribunals, acting within the scope of their lawful authority, with jurisdiction over the person and subject matter involved, cannot be reviewed or set aside by the civil courts by mandamus or otherwise. P. 259 U. S. 344 .

277 F. 594 affirmed.

Error to a judgment of the Court of Appeals of the District of Columbia, which reversed a judgment of the Supreme Court granting the writ of mandamus against the present defendant in error and dismissed the proceeding.

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MR. JUSTICE CLARKE delivered the opinion of the Court.

This case is in most respects so like No. 724, *United States of America ex rel. John W. French, ante,* 259 U. S. 326 , that the two were argued and submitted together.

The relator herein was a colonel in the army, and was discharged on November 17, 1920, "by direction of the president," on order of the Secretary of War, under the provisions of 24b of the Army Reorganization Act (41 Stat. 759, 773). In his petition, he prays, as did Col. French in the other case, for a writ of mandamus commanding the Secretary of War to vacate the order for his discharge and to restore him to the status of colonel in the army, which he had held before the order.

The defendant answered the petition, a demurrer to the answer was sustained, and, the defendant not desiring to

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plead further, the Supreme Court of the District of Columbia granted the writ of mandamus as prayed for. On error, the Court of Appeals of the District of Columbia reversed the judgment of the Supreme Court, and the case is here for construction of the Act of Congress involved.

In addition to the contention that 24b of the Army Reorganization Act required personal and judicial action on the part of the President, this day disposed of in No. 724, only one other question is argued in this case, *viz.:* did the failure to give the relator notice of the time and place of the meeting of the Honest and Faithful Board which considered his case, with an opportunity to be heard in his own behalf, so deny to him due process of law as to render void the action resulting in his discharge?

We shall not repeat the discussion of 24b which led to our conclusion in No. 724, but we shall here confine ourselves to the additional question, as we have stated it, presented by this record.

When Col. Creary was notified that he had been placed in class B as an officer "who should not be retained in the service," he requested a Court of Inquiry, which was thereupon convened, and it is averred in the answer and admitted by the demurrer that,

"by and before that board, he was given full and free opportunity to present testimony of himself and others in his behalf and to be heard fully, of which opportunities he availed himself so far as he desired."

The record of the Court of Inquiry was forwarded, as provided for by 24b, to the Board of Final Classification, and that board, without notice to the relator, reconsidered his case, but by its final finding retained him in class B. Thereupon, again without notice to relator, his case went to the Honest and Faithful Board, which finally classified him in class B for "causes due to his neglect, misconduct and avoidable habits," and under the terms of the statute he was discharged from the army.

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Thus is presented for decision the question whether the due process clause of the Fifth Amendment required that the relator should be given an opportunity to be heard before the finding was made by the board which required his discharge from the army.

The power given to Congress by the Constitution to raise and equip armies and to make regulations for the government of the land and naval forces of the country (Art. I, 8) is as plenary and specific as that given for the organization and conduct of civil affairs; military tribunals are as necessary to secure subordination and discipline in the army as courts are to maintain law and order in civil life, and the experience of our government for now more than a century and a quarter, and of the English government for a century more, proves that a much more expeditious procedure is necessary in military than is thought tolerable in civil affairs (2 Stat. 359; *Dynes v. Hoover,* 20 How. 65). It is difficult to imagine any process of government more distinctively administrative in its nature and less adapted to be

dealt with by the processes of civil courts than the classification and reduction in number of the officers of the army provided for in 24b. In its nature, it belongs to the executive, and not to the judicial, branch of the government.

In the present case, it is admitted that the relator was given full opportunity to be heard and that he was heard by the Court of Inquiry, and this is the only one of the four tribunals which dealt with his case which the act of Congress requires shall give him a hearing. The various boards provided for each certainly had jurisdiction over the person of the relator as an army officer and over the subject of inquiry, under the terms of the act of Congress, and also because the right dealt with was distinctly military in its nature, affecting the status in the army of a soldier, and it is entirely clear that the boards which acted on his case did not exceed the powers conferred upon

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them. Such being the case, the Supreme Court of the District was without power to review or in any manner control the conduct of the boards or the result of their action. *Dynes v. Hoover,* 20 How. 65, 61 U. S. 82 ; *Johnson v. Sayre,* 158 U. S. 109 ; *Carter v. McClaughry,* 183 U. S. 365 , 183 U. S. 380 ; *Mullan v. United States,* 212 U. S. 516 ; *Reaves v. Ainsworth,* 219 U. S. 296 , 219 U. S. 304 .

Without pursuing the subject further, it is sufficient to repeat what was said by this Court in *Reaves v. Ainsworth,* 219 U. S. 296 , 219 U. S. 304 :

"To those in the military or naval service of the United States, the military law is due process. The decision therefore of a military tribunal, acting within the scope of its lawful powers, cannot be reviewed or set aside by the courts."

It results that, because the action of the President, given effect by the order of the Secretary of War, was in full compliance with the act of Congress, and also because the Supreme Court did not have jurisdiction to order the writ of mandamus prayed for, the judgment of the Court of Appeals reversing the judgment of that court must be

Affirmed.