

1967

Present : Alles, J., and Tennekoon, J.

J. W. DE ALWIS, Petitioner, and V. C. DE SILVA (Director of Public Works), Respondent

S. C. 265/67—*Application for the issue of a Mandate in the nature of a Writ of Mandamus*

Public officers—Ceylon Government Manual of Procedure, ss. 46, 47—Administrative Regulations made thereunder—They do not have the force and character of law—Regulation 20—Ceylon (State Council) Order in Council, 1931, ss. 39 (1), 39 (2)—Ceylon (Constitution) Order in Council, 1946, ss. 72, 87 (1), 87 (2), 88 (2)—Ceylon Independence Order in Council, s. 7 (c)—Interpretation Ordinance, s. 17 (1) (e)—Meaning of word “enactment”—Remedy of mandamus—Scope.

The Administrative Regulations laid down in the Ceylon Government Manual of Procedure do not have the status of “law” and non-compliance with them cannot be enforced by *mandamus*. Section 87 of the Ceylon (Constitution) Order in Council, 1946, denied to regulations made under it the force and character of law. Nor is section 17 (1) (c) of the Interpretation Ordinance applicable to those Regulations, for an Order in Council does not fall within the definition of an “enactment”.

The petitioner, who was an officer in the Public Works Department, forwarded, through the respondent who was the head of his Department, two petitions “A” and “B” addressed to the Public Service Commission and the Secretary to the Treasury, respectively. In the present application for the issue of a writ of *mandamus* against the respondent, the petitioner, relying on certain provisions of the Administrative Regulations contained in the Ceylon Government Manual of Procedure, prayed that the respondent be directed to forward the two aforesaid petitions to their respective addressees.

Held, that a writ of *mandamus* could not be issued, because no statutory duty of a public nature was owed by the respondent to the petitioner to forward the aforesaid petitions to their respective addressees. Moreover, *mandamus* was not available to the petitioner for the reason that the duty which arose under the Regulations was not owed to him but to the Crown.

APPPLICATION for a writ of *mandamus* against the Director of Public Works.

N. Sivagnanasunderam, with *L. S. Bartlett* and *K. Kanag-Iswaran*, for the petitioner.

H. L. de Silva, Crown Counsel, for the respondent.

Cur. adv. vult.

October 22, 1967. ALLES, J.—

At the conclusion of the argument we dismissed this application with costs and stated that we would give our reasons later. We now set down the reasons for our order.

The petitioner, while holding the post of Senior Deputy Director of Public Works in the Public Works Department, was interdicted from duty on 1st October, 1960, on an allegation that he had accepted an illegal gratification. An inquiry into the allegation was held by a Tribunal appointed by the Public Services Commission which by its report held that the charge against the petitioner was not proved. The Public Services Commission however altered the findings of the Tribunal, found the petitioner guilty and directed that he be compulsorily retired for inefficiency as a merciful alternative to dismissal. Thereafter all pension rights and emoluments to which he was entitled during the period of his interdiction were paid to him. In March 1965, the petitioner addressed a newly constituted Public Services Commission which offered him re-employment in the public service from 1st March 1966, in a post in the Department on a lower scale to that which he held previously, which offer the petitioner accepted.

On 20th November 1966 and 16th February 1967, the petitioner forwarded two petitions marked 'A' and 'B' on matters affecting his personal interests and his position in the Department to the Public Services Commission and the Secretary to the Treasury respectively, through the respondent who was the head of his Department. Copies of the petition marked 'B' had been sent direct to the Secretary to the Treasury and the Chairman and Members of the Public Services Commission and the Secretary to the Treasury has replied on 13th September 1967 that he was unable to grant the petitioner any relief. The petition marked 'A' was forwarded by the respondent without any comments by him on 18th December 1966 to the Public Services Commission and the Commission has replied in the same terms as the Secretary to the Treasury.

The present application for the issue of a mandate in the nature of a Writ of Mandamus against the respondent was filed on 18th July 1967 and prayed that the respondent be directed to forward the two aforesaid petitions to their respective addressees. Since the addressees have considered the petitions and replied to them, the necessity for the issue of a Writ at the present juncture hardly arises. Counsel for the petitioner however submits that the petitioner should be awarded the costs of this application on the ground that he was constrained to come into Court at the time he did and that there was at that time an unfulfilled duty owed to him by the respondent. We accordingly invited Counsel for the petitioner to satisfy us that a statutory duty of a public nature was owed by the respondent to the petitioner to forward the aforesaid petitions to their respective addressees; we now give our reasons why we are unable to accede to the submission of Counsel for the petitioner that a writ lies in this case.

The main complaint of the petitioner is that the respondent has failed to comply with the provisions laid down in the Manual of Procedure regarding correspondence and departmental procedure and in particular

sections 46 and 47 (relating to the reports by Heads of Departments regarding petitions forwarded through them) and the rules made thereunder. These are Administrative Regulations contained in the Ceylon Government Manual of Procedure and it was the submission of Counsel that these Regulations had the force of law, a non-compliance with which attracted the writ of mandamus.

An examination of the history of these Regulations is necessary in order to consider whether Counsel's submissions are entitled to succeed.

Under Articles 39 (1) and 39 (2) of the Ceylon (State Council) Order in Council, 1931, the administrative procedure relating to the control and transaction of governmental business through the Executive Committees and Officers of State was regulated by rules made by the Governor. In pursuance of these Articles, the Governor prescribed the rules of procedure for the transaction of business concerning subjects or functions with which the Executive Committees and the Officers of State had to deal. These rules are contained in Government Gazette No. 7,858 of 5th June 1931, and continued to be operative until 1946. In 1946 the Governor under Article 87 (1) of the Ceylon (Constitution) Order in Council, 1946, was empowered to modify, add to or adapt "the provisions of any general order, financial regulation, public service regulation or other administrative regulation or order, or otherwise for bringing the provisions of any such administrative regulation or order into accord with the provisions of this Order or for giving effect thereto." In pursuance of these powers the Governor notified that "the Administrative Regulations of the Government of Ceylon are by this Regulation modified, added to and adapted with effect from the date of the first meeting of the House of Representatives, to read as set out in the Schedule" (*vide* Government Gazette No. 9,769 of 22.9.1947). The Schedule contained the old Administrative Regulations suitably modified and adapted to the new constitutional arrangements. It is these regulations that have been published by the Government under the title of "Manual of Procedure" referred to earlier and they include provisions in regard to petitions by public officers. Under section 7 (c) of the Ceylon Independence Order in Council, the validity of these Regulations was not affected and they were continued in operation until they were revoked or replaced by new Regulations. The Regulations therefore continue to be in operation up to the present day. It is however not every regulation made under the Order in Council of 1946 that has the force of law. Section 87(2) states that every regulation made under subsection (1) of section 87 "shall have effect until it is amended, revoked or replaced by the appropriate Minister or authority under this Order". This language contrasts strongly with other sections of the Order in Council where it has been laid down that regulations made under such other sections shall have the force of law (*vide* sections 72 and 88 (2)). It is not strange that the Order in Council while setting up an exclusive law making authority viz., Parliament, when it gave power to any other authority to make rules or regulations in a limited field or context, was

careful to say which of such rules or regulations shall have the force of law and which not. The Order in Council clearly denied to regulations made under section 87 the force and character of law.

It was also submitted for the petitioner that the Interpretation Ordinance in section 17 (1) (e) gave the force of law to rules published in the Gazette (which includes regulations and by-laws); but this provision contemplates only such rules, regulations or by-laws as are made under any "enactment". An enactment has been defined to "include an Ordinance as well as an Act of Ceylon". An Order in Council does not fall within the definition of an "enactment". This is perhaps another reason why the Order in Council states categorically that only certain regulations made under an Order in Council have the force of law.

In *De Zoysa v. The Public Service Commission*¹ the present Chief Justice had occasion to consider whether the rules made under the Public Service Regulations had the force of law and after a consideration of a history of these regulations (which is similar to the history to the Administrative Regulations) held that the rules in relation to the retirement of public officers did not have the same legal effect as a statutory provision. Unlike the Administrative Regulations these Regulations seriously affect the tenure of office of public servants dealing as they do with the appointment, transfer and dismissal of public officers and the disciplinary procedure by which they should be governed. The Administrative Regulations only regulate a course of conduct for the guidance of public officers and are intended primarily to ensure the smooth functioning of work in Government Departments. The very nomenclature given to these Administrative Regulations—'Ceylon Government Manual of Procedure'—indicates that these are a set of administrative rules necessary to regulate the transaction of business in Government offices. To apply the language of the Privy Council in *Venkata Rao v. Secretary of State*² "the rules are manifold in number and most minute in particularity and are all capable of change." To give the effect of law to such regulations is bound to hamper the efficient functioning of governmental business. That is probably the reason why in regulation 20 all questions regarding the interpretation or application of any of these regulations were vested in the Secretary to the Treasury.

It seems to me therefore abundantly clear that the Administrative Regulations laid down in the Manual of Procedure do not have the status of "law" and that non-compliance with these rules cannot be enforced by Mandamus. The above reasons would be sufficient to dispose of this application but Crown Counsel submitted two further grounds why mandamus was not available in this case. The first was that the duty, if any, which arose under the regulations in question was one owed not to the petitioner but to the Crown. In support of this proposition Crown Counsel cited the observations of Charles, J. in *The Queen v. The Secretary*

¹ (1960) 62 N. L. R. 492.

² (1937) A. I. R. 31.

*of State for War*¹. I entirely agree. The duty to comply with the regulation is one which the respondent, as a public servant himself owes to the Crown whose servant he is and not to the petitioner who is a subordinate officer in his Department. Crown Counsel's further submission was that for Mandamus to lie the applicant must have a legal right to the performance of some duty of a public and not of a private character (*Perera v. Municipal Council of Colombo*²) and that even a duty arising under a statute may be a duty of a private kind (*Perera v. Ceylon Government Railway Uniform Staff Benevolent Fund*)³. In the instant case the duty arises, if at all, under a set of rules designed for the internal regulation of the duties and conduct of servants of the Crown and is devoid of any characteristics which would make it of a public nature.

There are no merits in this application either in law or on the facts and it must therefore be dismissed.

TENNEKOON, J.—I agree.

Application dismissed.

