

1958

Present : K. D. de Silva, J.

ABDUL MANAFF, Appellant, and J. V. R. LA BROOY,
Respondent

S. C. 47—C. R. Kandy, 13,041

Public Servants (Liabilities) Ordinance—Section 4—Member of the Local Government Service—Is he a “public servant” ?—Local Government Service Ordinance, No. 43 of 1945, ss. 11, 13, 14, 15, 45 (1).

A member of the Local Government Service constituted by section 13 of the Local Government Service Ordinance, No. 43 of 1945, is not a public servant within the meaning of section 4 of the Public Servants (Liabilities) Ordinance unless he can show that, before the Local Government Service Ordinance came into operation, he was entitled to the benefit of the Public Servants (Liabilities) Ordinance and that he did not lose that benefit on becoming a member of the Local Government Service.

APPPEAL from a judgment of the Court of Requests, Kandy.

H. W. Jayewardene, Q.C., with *G. T. Samerawickrame* and *N. R. M. Daluwatte*, for the plaintiff-appellant.

P. Somatilakam, with *W. D. Gunasekera*, for the defendant-respondent.

Cur. adv. vult.

September 10, 1958. K. D. DE SILVA, J.—

The plaintiff appellant who is a money lender sued the defendant respondent to recover a sum of Rs. 260 which he alleged was due to him from the defendant on the promissory note dated 10th July, 1953, produced in the case marked A. This promissory note is for the sum of Rs. 200 carrying interest at the rate of 18%. The defendant in his answer stated that he received only a sum of Rs. 150 on the note sued upon and that he had paid the plaintiff a sum of Rs. 175 in full settlement of the amount due on it. He further stated that he was a public servant in that he was employed as a plumber in the Municipal Council, Kandy, and was in receipt of Rs. 295 as salary and allowance per month and pleaded the benefit of the Public Servants (Liabilities) Ordinance (Cap. 88) (hereinafter referred to as the Ordinance).

The parties went to trial on four issues one of which reads as follows :—

“Is the defendant a public servant within the meaning of the Public Servants (Liabilities) Ordinance?”

The learned Commissioner answered that issue in the affirmative and dismissed the plaintiff's action. This appeal is from that judgment.

The question for decision on this appeal is whether the defendant comes within the definition of a “public servant” as contemplated by section 4 of the Ordinance. According to that section a public servant “means a person employed in the service of the Government of the Island, or of any Municipal Council or District Council, or Local Board, or of any Provincial or District Committee established under the Thoroughfares Ordinance”. It was urged on behalf of the plaintiff that the defendant is not a person employed in the service of the Municipal Council, Kandy, but an officer in the service of the Local Government Service and as such is not entitled to the benefit of the Ordinance. In support of that contention the Counsel for the appellant relied on certain provisions of the Local Government Service Ordinance, No. 43 of 1945. Section 13 of that Ordinance constituted a Service called and known as “The Local Government Service”. Section 14 provides that this service “shall consist of those officers and servants of the Municipal Councils, Urban Councils, Sanitary Boards, Village Committees, Provincial Road Committees and District Road Committees whose posts are specified in the First Schedule”. The next section, *i.e.*, section 15, provides that every member of the service shall be deemed for all purposes to be in the service of the Local Government Commission which is created by section 2 of that Ordinance. Section 14 thus brings into the Local Government Service certain officers who are clearly not entitled to the benefit of the provisions of the Public Servants (Liabilities) Ordinance. They are the officers and servants of the Sanitary Boards and Village Committees. In *Dissanayaka v. Yatarawa*¹ it was held that a person employed in the service of a Sanitary Board does not fall within any of the classes of employees enumerated in section 4 of the Public Servants (Liabilities) Ordinance and cannot therefore claim the benefit of that Ordinance.

¹ (1948) 49 N. L. R. 214.

Section 11 of the Local Government Service Ordinance vests in the Commission the powers to recruit, appoint, transfer, dismiss and interdict the members of the Service and to maintain discipline in the Service. The main object of that Ordinance was to bring into being a body of officers and servants under the full and exclusive control of the Commission to be employed under the various local authorities. Although the salary of each officer was to be paid by the local authority to which he was attached yet he was deemed for all purposes to be in the service of the Commission. Section 15 (2) of the Local Government Service Ordinance provided that "each member of the Service shall be deemed to be a public servant within the meaning of the Penal Code". The fact that no provision was made to treat the members of the Service as public servants within the meaning of Ordinances other than the Penal Code is very significant. Although practically every officer of the Service is employed under a local authority can it be said that an officer attached to a particular local authority is in the service of that local authority? I think that question must be answered in the negative. The counsel for the respondent attempted to draw a distinction between "employment" and "service". He argued that although an officer is in the service of the Commission yet he is employed by a local authority and that if he is so employed by a local authority enumerated in section 4 of the Public Servants (Liabilities) Ordinance he is entitled to plead the benefit of that Ordinance. I am not impressed by that argument. A public servant who is protected by section 2 of the Ordinance is a person employed "in the service" of the local bodies enumerated in section 4. Mere employment in such a local body is insufficient but he must also be in the service of the local body, if he is to secure the protection of the Ordinance. I would therefore hold that a member of the Local Government Service constituted by section 13 of Ordinance No. 43 of 1945 is not a public servant within the meaning of the Public Servants (Liabilities) Ordinance unless he can show that before the Local Government Service Ordinance came into operation, he was entitled to the benefit of the Ordinance (Cap. 88) and he did not lose that benefit on becoming a member of the Local Government Service. Section 45 (1) of Ordinance No. 43 of 1945 provides that every officer or servant of a local authority, who on the day immediately preceding the date on which the Ordinance came into operation, held a scheduled post shall on that date be transferred to the Service. Such a person is called a "transferred member" of the service. Section 45 (1) further provides that a "transferred member" shall thereafter be deemed for the purposes of that Ordinance to be a member of the Service. Thus there is a distinction between a "transferred member" and an ordinary member of the Service. An ordinary member is governed by all the provisions of Ordinance No. 43 of 1945 whereas a "transferred" member is only deemed to be a member of the Service for the purposes of that Ordinance. Therefore a "transferred member" if at the date of his transfer was in possession of any rights which are not repugnant to the provisions of Ordinance No. 43 of 1945 he would not lose those rights merely because he is absorbed into the Service in consequence of section 45 (1) of that Ordinance. It is true that that Ordinance did not confer

rights under the Public Servants (Liabilities) Ordinance on the members of the Service but it also did not take away from those persons absorbed into the Service under Section 45 (1) the rights they already enjoyed under the Public Servants (Liabilities) Ordinance. The "transferred members" are to be deemed to be members of the Service only for the purposes of Ordinance No. 43 of 1945. The conferment or the abrogation of the rights under the Ordinance (Cap. 88) was not one of its objectives. Hence a "transferred member" who at the date of transfer was eligible to the rights under the Ordinance (Cap. 88) would not, by reason of transfer alone to the Service, forfeit those rights.

The defendant has been employed in the Municipal Council, Kandy, for a period of 35 years. It is not denied that at the time of his transfer to the Service he was entitled to plead the benefit of the Ordinance. He continued to be employed in the Municipal Council, Kandy, up to the date of institution of this action. His monthly emoluments amount to less than Rs. 300. Hence he is entitled to claim the benefit of the Ordinance (Cap. 88). The learned Commissioner was right, therefore, in answering the issue in the affirmative. Accordingly I dismiss the appeal with costs.

Appeal dismissed.
