the Crown. If the grant be withheld by the Director, the teacher's right to claim his salary is not affected. Although a Manager is precluded by the Code from employing or discontinuing a teacher without the prior approval of the Director of Education, this does not in any way establish privity of contract between the teacher and the Director. If one applies to the respondent the tests laid down for determining whether a person is a servant of the Crown—namely (1) who makes the appointment? (2) who dismisses him? (3) who pays his salary? (vide *Podi Singho v. Goonesinghe* [1]), I would say that the answer to each question would be "the Reverend Derek Karunaratne" and not "the Director of Education". No doubt the Director controls the appointment and the dismissal, and no doubt the public revenue may be the *source* from which a sum equivalent to the petitioner's salary payable by the Manager is derived, but in each case the privity of contract between the master and his servant remains wholly unaffected. Even if the payment be made direct to the teacher from public funds, it is made *on behalf of* the Manager who is the real debtor under the contract of service. Mr. Wikremanayake referred me to *Bowers v. Harding* [2] where it was held that the master of a "national school" in England held "a *public* office or employment of profit" within the meaning of schedule E of the Income Tax Acts. I find myself unable to derive much assistance from this ruling in the absence of some indication of the extent, if any, to which the constitution of a national school in England approximates to that of a privately owned Assisted School in Ceylon.

For the reasons which I have now recorded I refused the petitioner's application with costs which were fixed at Rs. 315.

Application dismissed.

1949 *Present:* **Basnayake J.**

PERADENIYA SERVICE BUS CO., Petitioner, *and* SRI LANKA OMNIBUS CO., Respondent

Application No. 28—Case stated under section 4 of the Motor Car Ordinance, No. 45 of 1938

Omnibus Service Licensing Ordinance, No. 47 of 1942—Procedure by which Tribunals acting under the Ordinance should be guided—Case stated for opinion of Supreme Court—Form in which it should be sent up—Section 13 (8)—Motor Car Ordinance, No. 45 of 1938, section 4.

When a Tribunal of Appeal states a case under section 13 (8) of the Omnibus Service Licensing Ordinance, No. 47 of 1942, it should set out in full the facts on which it bases its decision, its findings thereon and its decision on the questions of law argued before it. It should also state the questions on which the opinion of the Supreme Court is desired.

A case stated must be signed by all the members of the Tribunal of Appeal and not by the Chairman alone.

[1] *(1948) 49 N. L. R. 344 at page 346.* [2] *(1891) 1 Q. B. 560.*

CASE stated under section 4 of the Motor Car Ordinance, No. 45 of 1938, and section 13 (8) of the Omnibus Service Licensing Ordinance, No. 47 of 1942.

C. Thiagalingam, with *G. T. Samerawickreme*, for the Peradeniya Service Bus Company.

H. V. Perera, K.C., with *W. D. Gunasekera*, for the Sri Lanka Omnibus Company.

Cur. adv. vult.

December 5, 1945. BASNAYAKE J.—

This is a case stated by a Tribunal of Appeal under the Omnibus Service Licensing Ordinance, No. 47 of 1942 (hereinafter referred to as the Omnibus Service Licensing Ordinance), on the application of the Peradeniya Service Bus Company, Limited (hereinafter referred to as the applicant).

It appears that the applicant had applied to the Commissioner of Motor Transport (hereinafter referred to as the Commissioner) for an extension of the route covered by its road service licence, by half a mile, from its present terminus to a point called Embilmeegama on the Kandy–Colombo Road. A company known as the Sri Lanka Omnibus Company, Limited, which had a road service licence for the route from Kandy to Colombo had also applied for a road service licence from Kandy *via* Embilmeegama to Daulagala. The Commissioner refused the applications of both. Being dissatisfied with his decision each of them appealed under section 12 (6) of the Omnibus Service Licensing Ordinance to a Tribunal of Appeal. The Tribunal appears to have dismissed the appeals of both the applicant and the Sri Lanka Omnibus Company.

The applicant thereupon made an application to the Tribunal, under section 13 (8) of the Omnibus Service Licensing Ordinance, to state a case for the opinion of this Court. The Tribunal accordingly stated the following case:—

"1. The appellant company, the P. S. Bus Co., held a licence to ply buses from Kandy to Daulagala *via* Peradeniya, a distance of about 10 miles: it next obtained an extension of that route to a point midway between the 2nd and 3rd mile posts on the road from Daulagala to Embilmeegama on the main road, and thereafter obtained a further extension to a point ½ mile distant from Embilmeegama. These extensions were decided without notice to the respondent, the Sri Lanka Bus Co., which holds the licences to run buses on the main road from Kandy to Embilmeegama and thence to Colombo. Appellant argues that no notice was necessary.

"2. Finally, the appellant Co. applied for an extension from that ½ mile post on to Embilmeegama. The respondent company also applied for a licence to run buses from Kandy *via* Embilmeegama to Daulagala. The Commissioner considered it to be wasteful competition to allow either company to run buses on that ½ mile of road and dismissed the appellant's application on that ground. He dismissed respondent's application on various grounds and both appellant and respondent appealed.

"3. Respondent's appeal has been dismissed by this Tribunal because it contained no statement of the grounds of appeal. Appellant's appeal has been dismissed on the grounds—(1) that to grant appellant this licence would encroach on the custom now enjoyed by respondent, (2) that respondent has as good a claim to hold the licence in issue as the appellant. We disagree with the Commissioner's view that this ½ mile should be left unserved, since we had in mind the needs of the sick and the aged as well as the general public.

"4. The points for decision are (1)—whether this Tribunal was entitled to consider any counterclaim after the respondent's appeal had been dismissed, (2) whether it was not bound to grant the application of the appellant as the only applicant in the field, (3) whether the Tribunal was not bound to set aside the Commissioner's order and allow the appeal on the grounds stated in paragraph 10 (A to D) of appellant's present application or whether the needs of the public are or are not best served by the decision as it stands, under which all parties may make fresh applications and call further evidence.

"5. Let the Commissioner forward these proceedings with the present application and the proceedings at the previous hearing of this appeal and at his inquiry with all documents then produced."

The stated case is open to several objections. In the first place it is signed only by the member elected to be the Chairman of the sitting and not by all the members of the Tribunal. The statute [1] imposes the duty of stating a case on the tribunal and not, as some English statutes do, on the Chairman alone.

In the next place the stated case does not set forth the facts. Under the Omnibus Service Licensing Ordinance a party is entitled to make an application for a stated case on questions of both law and fact [2]. The stated case should therefore set out in full the facts relied upon by each party to the hearing before the Tribunal and its findings on those facts.

Lastly the questions on which the opinion of this Court is asked do not arise on the stated case. Having applied for a road service licence under the Omnibus Service Licensing Ordinance the applicant was entitled to have his application considered both by the Commissioner and by the Tribunal of Appeal on its merits. Some of the considerations that should influence the decision of the Commissioner in dealing with an application for a road service licence are set out in section 4 of the Omnibus Service Licensing Ordinance. It is proper for a Tribunal of Appeal to take into account those same considerations among others when dealing with an appeal.

It is not correct for the Tribunal to treat an appeal, as it appears to have been done in the case of the applicant's appeal, as a counter claim to another appeal, viz., the appeal of the Sri Lanka Omnibus Company. Nor should it regard itself bound to allow an appeal on the ground that the appellant is the sole applicant for a licence. A Tribunal is not entitled to submit questions of policy nor is it entitled, as it appears to do in question 3, to shift the entire responsibility of deciding an appeal to this Court.

[1] *Section 4 (6) (a) of the Motor Car Ordinance, No. 45 of 1938.*
[2] *Section 13 (8) of the Omnibus Service Licensing Ordinance.*

The instant case has impressed on me the necessity of laying down the procedure by which Tribunals acting under the Omnibus Service Licensing Ordinance should be guided. Under that Ordinance every application for a road service licence must be made to the Commissioner (section 3) who is empowered to grant or refuse it (section 4), after taking into consideration any such representations as may be made to him by persons who are already providing transport facilities along or near to the proposed route or any part thereof or by any local authority within the administrative limits of which any proposed route or part thereof is situated. Before refusing an application for a road service licence on the ground of any representation made to him the Commissioner is required to notice the applicant in order that he may have an opportunity of being heard (section 4). Section 4 lays down certain matters which the Commissioner is bound to take into account in deciding whether to grant or refuse a road service licence. The functions of the Commissioner under section 4 are quasi-judicial. He is required to consider representations made to him by interested persons against an application and by the applicant in support of it. As section 13 gives the applicant a right of appeal against the decision of the Commissioner to a Tribunal of Appeal the Commissioner should maintain a record of the material on which he bases his decision. That record should consist of the application for the road service licence, the representations, if any, made against the grant of the licence applied for, the matters urged by the applicant in support of his application, and any matters ascertained by the Commissioner on his own initiative. Although the Commissioner is not required to hear the parties *ad corum*, if he does give them an oral hearing, he should keep a full record of the evidence given at such hearing. As the functions of the Commissioner under section 5 are quasi-judicial and particularly as there is a right of appeal to the Tribunal of Appeal, he should give reasons for his decision.

The rules[1] which govern the proceedings before a Tribunal of Appeal provide that the Tribunal shall hear the parties who are given the right to be present and to be heard either in person or by representative. The hearing before the Tribunal of Appeal should, except where the Tribunal considers it necessary to call for evidence oral or documentary, be confined to the material in the record of the Commissioner. The Tribunal of Appeal should maintain a record of such evidence oral or documentary as it deems necessary to call for in the exercise of its powers[2], and should give reasons for its decision. When the Tribunal states a case on an application for a stated case it should set out fully the facts on which it bases its decision, its findings thereon and its decision on the questions of law argued before it[3]. It should also state the questions on which the opinion of this Court is desired[4]. Questions of policy and hypothetical questions should not be put. Neither the Commissioner's record nor the record of the Tribunal need be sent up to this Court unless the stated case invites reference to any statement of fact or any document therein. The official reports of the Income Tax cases of

[1] *Regulations made under section 4 of the Motor Car Ordinance, No. 45 of 1938.*
[2] *Regulation 11 of the regulations made under section 4 of the Motor Car Ordinance, No. 45 of 1938.*
[3] *Great Western Railway Co. v. Bater, 8 Tax Cases 231 at 245 and 257.*
[4] *Farmer v. Trustees of the late William Cotton, 6 Tax Cases 609.*

England contain excellent examples of cases stated under the Income Tax Acts on which cases stated under the Motor Car Ordinance, No 45 of 1938, and the Omnibus Service Licensing Ordinance can with advantage be modelled.

I wish to add that evidence adduced before quasi-judicial tribunals like the Commissioner or the Tribunal of Appeal should consist of oral statements or documents in writing which are made in the presence of or communicated to both parties before the Tribunal reaches its decision [1].

In the instant case the form in which the case has been sent up prevents me from expressing my opinion on the specific questions raised. The result is that the applicant finds himself stated "out of court"[2]. I regret I can do nothing for him.

This is a case in which each party should bear his own costs.

Case stated rejected.

1950 *Present* : **Gratiaen J.**

BRITO MUTUNAYAGAM, Appellant, *and* HEWAVITARNE, Respondent

S. C. 145—C. R. Colombo, 15,787

Rent Restriction Ordinance—Premises reasonably required for landlord's son or daughter over eighteen years of age—Can tenant be ejected?—Ordinance No. 60 of 1942, proviso to s. 8.

The words "dependent on him" in the proviso to section 8 of the Rent Restriction Ordinance qualify "son or daughter over eighteen years of age" as well as those classes of relatives described in the later part of the sentence. A landlord, therefore, is not entitled to claim the premises on the ground that they are reasonably required for occupation as a residence for his son or daughter who is over eighteen years of age, unless the latter is also proved to be dependent on him.

APPEAL from a judgment of the Commissioner of Requests, Colombo.

H. V. Perera, K.C., with *S. J. Kadirgamar*, for defendant appellant.

F. A. Hayley, K.C., with *W. D. Gunasekera*, for plaintiff respondent.

Cur. adv. vult.

February 16, 1950. GRATIAEN J.—

This has been a difficult case to determine, and I am very conscious of the fact, as the learned Commissioner has been, that a decision favourable to either party necessarily involves some measure of hardship to the other.

[1] *In Re Moxon (1945) 2 All E. R. 124 at 130.*
[2] *The American Thread Co. v. Joyce, 6 Tax Cases 21.*