

1969 Present : H. N. G. Fernando, C.J., and Weeramantry, J.

G. E. RATNASINGHAM, Appellant, and PEOPLE'S BANK,
Respondent

S. C. 302/67 (F)—D. C. Colombo, 60492/M

Public servant—Salary less than Rs. 520—Temporary secondment to Port Cargo Corporation on salary of more than Rs. 520—Debt incurred by him during period of seconded service—Exemption from liability—Port Cargo Corporation Act, No. 13 of 1958, s. 50—Motor Transport Act, No. 48 of 1957, s. 9—Public Servants (Liabilities) Ordinance, s. 2 (1) (2).

Where a public servant whose salary in regard to his fixed employment does not exceed Rs. 520 per month enters into a contract of guarantee at a time when he has been seconded to the Port Cargo Corporation on a temporary appointment giving a monthly salary of more than Rs. 520, section 2 of the Public Servants (Liabilities) Ordinance protects him from liability under the guarantee.

APPEAL from a judgment of the District Court, Colombo.

K. Nadarajah, for the 3rd defendant-appellant.

N. Satyendra, for the plaintiff-respondent.

Cur. adv. vult.

June 20, 1969. H. N. G. FERNANDO, C.J.—

The plaintiff Bank sued three defendants on two causes of action. As against the 1st defendant the plaintiff claimed that the Bank had lent an advance to him of a sum of Rs. 15,000 with interest, and giving credit for certain payments, sued for the balance due on the loan.

As against the 2nd and 3rd defendants, the claim of the plaintiff was based on a guarantee by which these defendants undertook to pay to the plaintiff moneys due on the loan transaction from the 1st defendant. On this cause of action the learned District Judge entered judgment against the 3rd defendant for the amount claimed.

The defence taken up by the 3rd defendant was based on s. 2 of the Public Servants (Liabilities) Ordinance. Sub-section (1) of this section provides that no action shall be maintained against a public servant upon any promise to be answerable for the debt or default of another

person. Sub-section (2) provides that this immunity does not apply to a public servant "who at the date when the liability sought to be enforced is contracted is in receipt of a salary in regard to his fixed appointment of more than five hundred and twenty rupees a month".

The guarantee in this case was signed by the 3rd defendant on 16th June 1962. The 3rd defendant was a member of the General Clerical Service and his substantive salary as a member of that service at all material times was less than Rs. 520 per month. On 15th May 1958 however, he had been seconded for service with the Port Cargo Corporation, and at the time when he signed the guarantee he was still under secondment to the Corporation and was at that time in receipt as salary from the Corporation of Rs. 640 per month. The learned trial Judge has held that the salary of the 3rd defendant in regard to his fixed appointment on 16th June, 1962 was Rs. 640, and that accordingly the Public Servants (Liabilities) Ordinance does not protect him from his liability under the guarantee.

Section 50 of the Port Cargo Corporation Act No. 13 of 1958 enables the Directors of the Corporation to recruit as employees of the Corporation an officer in the Public Service either for temporary appointment to the staff of the Corporation or for permanent appointment to the staff. The section further provides that in such cases the provisions of section 9 of the Motor Transport Act will apply to an officer so appointed to the staff of the Corporation. The 3rd defendant clearly was thus seconded to the Port Cargo Corporation on a temporary appointment. In fact this secondment ceased even prior to the institution of the present action and the 3rd defendant reverted to office in the General Clerical Service in November 1962.

In reaching his conclusions against the 3rd defendant the learned trial Judge has relied upon a provision of s. 9 of the Motor Transport Act (in its application to this case) under which in a case of a temporary officer the Port Cargo Corporation must pay to the Consolidated Fund 25% of the salary payable to the officer in his substantive post in the public service. Having referred to this provision, the trial Judge states "that the Board pays to the Treasury the extra remuneration which the 3rd defendant became entitled to by virtue of his secondment". This statement is based on a misunderstanding of the provision in s. 9. This monthly sum equivalent to 25 per cent of the officer's substantive salary does not in any way represent the extra remuneration which the officer gets in the seconded office. The requirement for such a payment by the Corporation to the Treasury is connected with the fact that the period of the seconded service with the Corporation will count for the pension to which the officer will be entitled as a member of the General Clerical Service under the Pension Minute. Such a provision does not provide a test by which to determine for the purpose of the Public Servants

(Liabilities) Ordinance what was the 3rd defendant's salary in regard to his fixed appointment at the relevant time. Undoubtedly the 3rd defendant on 16th June 1962 was in receipt of a salary of Rs. 640 per month as a seconded employee to the Corporation, and the question for determination is whether his appointment at that date under the Corporation was his fixed appointment.

The question is a difficult one because there could not have been in contemplation in 1889 a situation in which Public Officers are seconded for service under Corporations established for the purpose of carrying out functions which before their establishment were carried out by Departments of Government. But there is in my opinion sufficient material for holding that the protection enjoyed under the Ordinance by certain categories of public servants is retained by them on such secondment. By reason of s. 9 (3) of the Motor Transport Act, an officer in the Public Service who is permanently appointed to the staff of the Corporation, *shall be deemed to have left the public service*. This is some indication of an intention that a seconded officer *temporarily* appointed to the Corporation does not thereby leave the Public Service. Again, s. 9 (2) provides that an officer having a temporary appointment in the staff of the Corporation "shall be deemed to have been absent from duty in the Public Service on leave granted without salary", and the effect of this provision is that the officer's service with the Corporation counts for pension as service under the Government. Thus the law for pension purposes regards service with the Corporation as being service as a Public Servant. Having regard to these provisions there is much justification for the view that a public servant who is temporarily employed by the Corporation is so employed for the very reason that he is a permanent officer of the Public Service, and that it is his capacity as a member of the Public Service which qualifies him for the temporary appointment in the Corporation.

Let me take now a case which is fairly analogous to the present one. Suppose that an officer in the Clerical Service whose substantive salary is less than Rs. 520 per month acts for some period in a staff appointment, and receives during that period a salary exceeding Rs. 520. If what is relevant for the purpose of the Public Servants (Liabilities) Ordinance is the salary in his seconded office, then the officer will not be immune from liability upon a contract entered into during his secondment. Nevertheless, if he later reverts to a post in the Clerical Service and to his former scale of salary, the immunity will again attach to him in respect of any new contract. I much doubt whether the Legislature intended that a particular Public Officer should at some stages of his service be liable upon such contracts, but that there may be intervals between these stages during which he will not be so liable.

I hold accordingly that in the case of the 3rd defendant his fixed appointment within the meaning of the Public Servants (Liabilities) Ordinance was his permanent and substantive appointment, which was that of an officer in the General Clerical Service. His salary in respect of that appointment was obviously below Rs. 520 per month and he therefore enjoyed the immunity conferred by the Ordinance.

The judgment and decree are set aside and the plaintiff's action is dismissed. In view of the novelty of the question which arises in this case the 3rd defendant will be entitled only to the costs of this appeal.

WEERAMANTRY, J.—I agree.

Judgment and decree set aside.
