

1936

*Present* : Fernando A.J.PARANGODEN *v.* RAMAN *et al.*

104—C. R. Colombo, 17,684

*Public Servants' (Liabilities) Ordinance—Municipal employees—Plea of public servant—Ordinance No. 2 of 1899, s. 2.*

The defendants were Municipal employees in the regular service of the Municipal Council. They received their pay monthly, although it was calculated on a daily rate. They were entitled to certain privileges as regards sick leave and would receive a gratuity at the end of their period of service.

*Held*, that they were public servants within the meaning of section 2 of the Public Servants' (Liabilities) Ordinance, No. 2 of 1899.

Where one of the defendants had terminated his service after the institution of the action, he was entitled nevertheless to the protection of the Ordinance.

*Perera v. Perera* (13 N. L. R. 257) followed; *Samsudeen v. Goonewardene* (14 C. L. Rec. 195) referred to.

**A** PPEAL from a judgment of the Commissioner of Requests, Colombo.

*J. R. Jayawardene* (with him *Muttucumaru*), for plaintiff, appellant.

*Mackenzie Pereira*, for defendant, respondent.

*Cur. adv. vult.*

September 15, 1936. FERNANDO A.J.—

This was an action filed by the plaintiff against the two defendants on a promissory note, executed by them on March 10, 1932. In their answers the defendants pleaded that the note was given as security for some money due to a cheetu club, and that the amount had been duly paid.

Three issues were framed at the commencement of the trial, but after the first defendant had given evidence, Counsel for the defendants moved to raise the issue, whether the defendants were public servants, within the meaning of Ordinance No. 2 of 1899. The learned Commissioner of Requests dealt with all the issues, and held that the note was given for money lent to the defendants, that there was no evidence of payment, and that the full amount claimed was due. He then went on to hold that

the defendants were public servants within the meaning of the Ordinance and accordingly dismissed the plaintiff's action. The plaintiff appeals from this order.

Counsel for the appellant cited a number of authorities of which I need only refer to *Perera v. Perera*<sup>1</sup>. The evidence there was, that the second defendant was paid Re. 1.37 per day, that if he was absent without leave he was fined, and that after a length of service he would be entitled to a gratuity. On this evidence, Wood Renton J. held that the second defendant was a public servant within the meaning of this Ordinance. The learned Commissioner in this case held on the evidence before him that the defendants were both in the regular service of the Municipal Council, that they were entitled to certain privileges as regards sick leave, and would receive a gratuity at the end of their period of service. It is also clear from the evidence that they receive their pay monthly, although the pay is calculated on a daily rate of pay. The case therefore falls clearly within the authority to which I have referred, and the Commissioner's finding that the defendants are public servants must be upheld.

A further question was raised in appeal which does not appear to have been taken in the Court below, namely, whether the second defendant had ceased to be entitled to the protection of the Ordinance as his service terminated in February, 1936. The plaint in this action, however, was filed on December 11, 1935, and it was held in *Samsudeen v. Goonewardene*<sup>2</sup> that an action against a public servant could not be maintained even in a case where the objection had been taken after judgment, and where the inquiry on the point was actually held after the defendant had ceased to be a public servant. Akbar J. held that the whole proceeding including the promissory note annexed to the plaint was void under section 4 of the Ordinance, because the action when instituted was in contravention of the Ordinance.

Counsel for the appellant attempted to question the finding of fact, but this appeal is only on a question of law, and he is precluded from challenging the findings on facts of the learned Commissioner of Requests. In these circumstances the appeal of the plaintiff must be dismissed with costs.

*Appeal dismissed.*

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<sup>1</sup> 13 N. L. R. 257.

<sup>2</sup> 37 N. L. R. 367.