

WIJewardANA
v
DIRECTOR OF LOCAL GOVERNMENT AND OTHERS

COURT OF APPEAL
AMARATUNGA, J. AND
BALAPATABENDI, J.
C. A. 37/93 (PHC)
H. C. MATARA 229/92
JANUARY 18 AND 23, 2002 AND
SEPTEMBER 12, 2003

Writ of certiorari – Local Government Service (Amendment) Act, No. 10 of 1985, section 9 (i) – Disciplinary control by whom? – Delegation of power – Constitution – 13th Amendment, Article 170 – Is the subject of Local Government a devolved subject? – Provincial Councils Act, No. 42 of 1987, section 32(2) – Interdiction – Charge sheet – Inquiry – Clerk attached to a Pradeshiya Sabha – Procedure – Can the LGSC delegate its powers to a Provincial Commissioner – Is he a public officer?

The petitioner was a Grade I clerk in the Local Government Service (LGS) attached to the Akuressa Pradeshiya Sabha. The Commissioner/Director of Local Government (Southern Province) interdicted the petitioner for misappropriating a certain sum.

The petitioner contends that the Commissioner / Director of Local Government, Southern Province had no power to interdict the petitioner or issue a charge sheet. It was further contended that disciplinary control of the service to which he belonged should be exercised by the Local Government Service Commission or by an officer to whom the Commissioner has delegated its powers. That power was delegated to the Divisional Assistant Commissioner of Local Government, Matara. The appellant's interdiction by the Provincial Commissioner of Local Government thus has no validity in law as at that time there was no delegation of the powers of the LGSC to the Director Local Government, Southern Province.

Held:

- (i) Any person holding a paid office under a Provincial Council is a person holding a paid office under the Republic. Even a Provincial Commissioner of Local Government is a public officer to whom the LGSC may validly delegate its powers under section 9 (i).

- (ii) The delegation of powers is valid from the date on which the Provincial Councils (Consequential Provisions) Act came into force. The Act became law on 30.5.1989; therefore the delegation of power operating with retrospective effect confers validity on the acts done by the 1st respondent from the date of his appointment as the Provincial Commissioner of Local Government, with regard to disciplinary control.

Per Amaratunga, J.

"A Provincial Council is a subordinate body established for the purpose of devolving some of the powers of the centre within the framework of a unitary State."

APPEAL from the judgment of the Provincial High Court of Matara.

Cases referred to:

1. *In Re the 13th Amendment* – (1987) 2 Sri LR 312
2. *Jayathevan v The Attorney-General* – (1992)2 Sri LR 356 at 363.

Dr. Jayampathi Wickremaratne, P.C., with *Pubudini Wickremaratne* for appellant.

Rohan Sahabandu for 1st respondent.

B. Jayasinghe Tilakaratne, Deputy Solicitor-General for Attorney-General.

January 12, 2004

GAMINI AMARATUNGA, J.

This is an appeal against the order of the learned High Court Judge of Matara, refusing the appellant's application for a *writ of certiorari* to quash the letter of interdiction and the charge sheet issued to him by the 1st respondent. The petitioner was a Grade 1 Clerk in the Local Government Service, attached to the Akuessa Pradeshiya Sabha. The Commissioner/Director of Local Government, Southern Province, by his letter dated 13/9/1989 (P1) interdicted the petitioner for misappropriating a sum of Rs.42,000/- belonging to the said Pradeshiya Sabha and for other charges relating to the administration of the funds of the said Sabha. The charge sheet issued to the petitioner by the 1st respondent is marked P2. The second respondent was nominated to hold the inquiry against the petitioner.

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The appellant's position was that in view of section 7(1) of Part II of the Local Government Service (Amendment) Act, No. 10 of 1985, disciplinary control of the service to which he belonged could be exercised by the Local Government Service Commission or by an officer to whom the Commission has delegated its powers. The officer to whom that power was delegated was the Divisional Assistant Commissioner of Local Government, Matara. His position was that the Commissioner/Director of Local Government, Southern Province, had no such powers and accordingly the letter of interdiction and the charge sheet issued to him by that officer had no validity in law and consequently the Inquiry Officer had no authority to hold an inquiry against him on the charges contained in the charge sheet issued to him.

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The position of the respondents was that after the 13th Amendment to the Constitution the subject of Local Government became a function devolved on the Provincial Councils and accordingly the Director of Local Government by letter dated 10/9/1989 directed that all powers exercised by the Director should be exercised by the Directors of Local Government of the Provinces nominated by that letter (V1). The Local Government Service Commission (LGSC), by Circular No.1/1990 dated 5/1/1990 delegated its powers relating to disciplinary control of the officers of the Local Government Service (other than staff grades) to the Provincial Commissioners. According to the respondents the appellant's letter of interdiction issued by the 1st respondent who was the Provincial Commissioner of Local Government of the Southern Province was valid. In any event, the Director of Local Government and the Secretary of the LGSC, by his letter dated 24/7/1992 approved the interdiction and the charge sheet issued to the appellant and this approval rectified the defects, if there were any, in the interdiction of and the charge sheet issued to the appellant. The learned High Court Judge has accepted the position of the respondents. The learned Judge has further held that the appellant had not exhausted all other legal remedies available to him. Accordingly he has dismissed the appellant's application.

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The position taken up by the learned President's Counsel in his written submissions filed in this Court on behalf of the appellant is as follows. Local Government is a subject fully devolved to the

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Provinces in terms of the 13th Amendment to the Constitution. Under section 32(2) of the Provincial Councils Act, No. 42 of 1987, disciplinary control of the officers of the Provincial Public Service was vested in the Governor, who could delegate his powers to the Provincial Public Service Commission. The appellant was absorbed into the Provincial Public Service on 1/1/1990. Prior to that the appellant belonged to the Central Local Government Service and the LGSC had the powers of disciplinary control over him. This power was delegated to the Provincial Commissioners of Local Government only on 5/1/1990. Therefore the appellant's interdiction on 13/9/1989 by the Provincial Commissioner of Local Government (1st respondent) had no validity in law as at that there was no delegation of the powers of the LGSC to the 1st respondent.

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This argument is correct. However as pointed out earlier, the LGSC, by Circular No. 1/1990 dated 5/1/1990, delegated its powers regarding disciplinary control of the officers of Local Government Service (non staff grades) to the Provincial Commissioners. Did this delegation have any legal effect to make the interdiction of the appellant by the 1st respondent valid?

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The learned President's Counsel has contended that the LGSC had no power to delegate its powers to a Provincial Commissioner. Is this submission correct? The relevant part of section 9(1) of the Local Government Service (Amendment) Act, No. 10 of 1985, which provides for the delegation of the powers of the LGSC reads as follows. "The Commission may delegate to any public officer,its powers of appointment, transfer, dismissal or disciplinary control of any category of members of the service" (emphasis added). Article 170 of the Constitution defines a public officer as a person holding any paid office under the Republic. A Provincial Council is a subordinate body established for the purpose of devolving some of the powers of the Centre within the framework of a Unitary State. *In re the Thirteenth Amendment to the Constitution*⁽¹⁾. A Provincial Council is a 'component of the Republic'. *Jayathevan v the Attorney General*⁽²⁾. Therefore any person holding a paid office even under a Provincial Council is a person holding a paid office under the Republic and accordingly is a public officer within the meaning of the Constitution and also for the

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purposes of the provisions of section 9(1) of Act, No.10 of 1985. In view of this conclusion even a Provincial Commissioner of Local Government is a 'public officer' to whom the LGSC may validly delegate its powers under section 9(1) of Act, No. 10 of 1985. I therefore hold that the delegation of the powers of the LGSC to the Provincial Commissioners made by Circular No. 1 of 1990 dated 5/1/1990 was a valid delegation. 90

The said Circular No. 1 of 1990 states that the delegation of powers made by it is valid from the date on which the Provincial Councils (Consequential Provisions) Act, No. 12 of 1989) came into force. That Act became law on 30/5/1989. Therefore this delegation of power, operating with retrospective effect, confers validity on the acts done by the 1st respondent from the date of his appointment (10/9/1989) as the Provincial Commissioner of Local Government with regard to the disciplinary control of the appellant. For the above reasons I hold that by virtue of Circular No. 1 of 1990, the letter of interdiction has become valid with retrospective effect. 100

The charge sheet against the appellant had been issued by the 1st respondent on 26/2/1991, at a time when the delegation made by the LGSC by Circular No. 1 of 1990 was effective and in force. Accordingly I hold that it was a charge sheet, validly issued and accordingly the 2nd respondent has the power and authority to hold an inquiry against the appellant on the charges set out in that charge sheet. In view of this conclusion I affirm the order of the learned High Court Judge dismissing the appellant's application. In view of this conclusion it is not necessary for me to examine the correctness of the learned High Court Judge's other conclusion that the appellant has not exhausted his other legal remedies before seeking a *writ of certiorari*. 110

The learned High Court Judge has also stated that the appellant's application was an attempt to avoid the inquiry to be held against him. I fully agree with this observation. For the reason stated above I dismiss this appeal and affirm the order of the learned High Court Judge. The appellant shall pay a sum of Rs. 5000/- to the 1st respondent as costs of this appeal. 120

BALAPATABENDI, J. - I agree.

Appeal dismissed.