

1961

Present : L. B. de Silva, J.

S. KANAGARATNAM, Petitioner, and S. KARTHIGESU
and 2 others, Respondents

S. C. 90—Application for a Writ of Quo Warranto

Local Authorities Elections Ordinance No. 56 of 1946, s. 10 (1) (d)—Teacher in Director-managed Assisted School—Qualification for membership of a Village Committee—Assisted Schools and Training Colleges (Special Provisions) Act No. 5 of 1960, ss. 3 (1), 4, 7 (1), 17—Quo Warranto.

A teacher employed in a Director-managed Assisted School under the provisions of the Assisted Schools and Training Colleges (Special Provisions) Act No. 5 of 1960 does not hold a public office under the Crown within the meaning of section 10 (1)(d) of the Local Authorities Elections Ordinance No.56 of 1946.

APPPLICATION for a writ of *quo warranto*.

G. T. Samarawickreme, with G. B. Kumarakulasinghe, for the Petitioner.

J. D. Asirwatham, with A. R. M. Munsoor, for the 1st Respondent.

H. L. de Silva, Crown Counsel, for the 2nd and 3rd Respondents.

Cur. adv. vult.

¹ (1960) 62 N. L. R. 233.

August 4, 1961. L. B. DE SILVA, J.—

The 1st Respondent was elected as the member for Ward No. 9 of the Village Committee of Nallur at an election held on 4th January, 1961. The petitioner who unsuccessfully contested the 1st Respondent at this election, is now challenging the election of the 1st Respondent on the ground that he held and continues to hold a Public Office under the Crown within the meaning of Section 10 (1) (d) of the Local Authorities Election Ordinance No. 56 of 1946 and maintains that he is disqualified from sitting and voting as a member of the Village Committee. He has applied for a writ of Quo Warranto on the 1st Respondent.

The other grounds set out in the Petition were not pressed by Counsel at the hearing of this application.

The 1st Respondent was and still continues to be a teacher at the Senguntha Hindu English School which is owned and run by the Hindu Board of Education, which is a private organisation. The School at all times material to this application was a private assisted School, receiving a Government Grant-in-aid under the Education Code.

Prior to the enactment of the Assisted Schools and Training Colleges (Special Provisions) Act, No. 5 of 1960 it has been held by Nagalingam, J. in *O. T. de Silva v. K. S. de Silva*¹ that a teacher employed in a private assisted School did not hold office under the Crown within the meaning of Section 10 (1) (d) of the Local Authorities Elections Ordinance, No. 53 of 1946.

At that time, under clause 16 of the Code of Regulations framed under the Education Ordinance, No. 31 of 1939, no appointment or dismissal of a teacher of an assisted English School could be made without the prior approval of the Director of Education. There was also provision under these regulations for the Government to pay the salaries directly to the teachers in such Schools or to the Manager of the School.

In the School concerned in that Application, the salaries of the teachers were directly paid by the Government to the teachers in that School. Section 50 of the Education Ordinance defines a "grant" paid to an assisted School as any form of sub-vention from state funds, including salaries paid direct to the teachers by the Department. It was held in that application that the salaries of teachers paid by Government constitute nothing more or less than a subsidy made by Government to the management of the School based on its educational policy.

So far as this point is concerned, there is no difference in the Code of Regulations framed for assisted English Schools and assisted Vernacular Schools.

The only question that this Court has to consider in the present application is whether the position of the 1st Respondent is altered by the

¹ (1951) 53 N. L. R. 343.

provisions of the Assisted Schools and Training Colleges (Special Provisions) Act, No. 5 of 1960. Under section 3 (1) of this Act, the Minister may declare that, with effect from such date as shall be specified in the Order, the Director shall be the Manager of every assisted School to which this Act applies.

At the relevant time, this School was a Director-managed School within the meaning of Section 3 (1), under the provisions of section 4 of the Act. It may be mentioned that under the Code of Regulations for assisted Schools, the appointment and dismissal of teachers are made by the Manager with the approval of the Director of Education. It follows that in a Director-managed School, the appointment and dismissal of teachers are made by the Director of Education, who is a public officer.

It is quite clear that the Act No. 5 of 1960 did not in any way alter the ownership of assisted private Schools. It did not vest the ownership of such Schools in the State. Section 17 of this Act states that "proprietor" has the same meaning as in the Education Ordinance, No. 31 of 1939. Section 7 (1) of the Act refers to the proprietor of any Assisted School of which the Manager is the Director.

The material questions for decision in this application are

- (1) Is the Manager of a School a principal or an agent ?
- (2) If he is an agent, who is his principal ?

An agent is a person having express or implied authority to represent or act for another person, who is called his principal. (Bousted on Agency, 9th edition—page 2.)

The relationship of Agency exists, and can only exist, by virtue of the express or implied assent of both principal and agent, except in certain cases of necessity, in which the relationship is imposed by operation of Law.

The assent of the principal is implied whenever another person occupies such a position that, according to the ordinary usages of mankind, he would be understood to have the principal's authority to act on his behalf.

The assent of the agent is implied whenever he acts or assumes to act on behalf of another and after having so acted or assumed to act he is not permitted, in an action by such person, to deny that agency in fact existed or that he had acted on such person's behalf.

The relationship of principal and agent may be constituted—

- (a) By express appointment by the principal or by a person duly authorized by the principal to make such appointment ;
- (b) By implication of law from the conduct or situation of the parties or from the necessity of the case, or
- (c) By subsequent ratification by the principal of acts done on his behalf.
(Vide Bousted on Agency, 9th edition—pages 13 and 14.)

So long as the Act No. 5 of 1960 recognises the rights of proprietors to assisted Schools, there can be no question that the proprietor of an assisted School is the principal, on whose behalf the Manager acts, in so far as he acts within the scope of his authority.

It is also relevant to consider if the Director-manager, who has derived his appointment by operation of law, is a duly constituted agent of the proprietor of the assisted School. It appears to me that the relationship of principal and agent has been constituted by implication of Law from the situation of the parties.

It is true that the situation of the parties as proprietor and manager has been created by statute but it follows as a necessary consequence of that situation that the Director-Manager acting within the scope of his appointment, is acting for the proprietor of the assisted School.

In whatever manner the State may influence the educational policy of the assisted School through the Director-Manager, who as the Director of Education is a public officer, there can be no doubt in law that as the manager of a private owned School he is the agent of the proprietor of the School.

Every agent has implied authority to do whatever is necessary for, or ordinarily incidental to, the effective execution of his express authority in the usual way. (Boustead on Agency, 9th edition—page 62). There can be no doubt that the appointment of teachers to the School is necessary for, or ordinarily incidental to, the effective execution of his express authority as the Manager of the School. Apart from such necessity or incidence, the Manager is empowered by the Regulations of the Education Code, to make such appointments.

I hold that the Director-Manager of an assisted School appoints teachers for and on behalf of the proprietor of the School and, in doing so, he is acting within the scope of his authority as the agent of the proprietor. It is quite clear to my mind that in making such appointments, the Director-Manager is not acting on behalf of the State so as to make such teachers persons holding public office under the Crown.

I hold that the 1st Respondent does not hold any public office under the Crown within the meaning of Section 10 (1) (d) of the Local Authorities Elections Ordinance No. 56 of 1946.

I accordingly dismiss the Application of the petitioner. The Petitioner is ordered to pay the 1st Respondent his costs of this application fixed at Rs. 210 and to the 2nd and 3rd Respondents jointly a sum of Rs. 105 as their costs.

Application dismissed.