

1971 Present : Weeramantry, J., and de Kretser, J.

R. D. N. FERNANDO, Petitioner, and D. RANEPURA, Respondent

*S. C. 767/70—Application for a Writ of Quo Warranto*

*Local authority—Disqualification for membership thereof—Grama sevaka—Whether he is a “holder of a public office”—Manner of appointment of public officers—Local Authorities Elections Ordinance (Cap. 262), s. 9 (1)—Declaration of British Sovereignty Ordinance (Cap. 391), s. 10—Ceylon (Constitution) Order in Council (Cap. 379), s. 60.*

A grama sevaka is the holder of a public office within the meaning of section 9 (1) of the Local Authorities Elections Ordinance. It cannot be contended that, by virtue of section 10 of the British Sovereignty Ordinance, a headman cannot be a public officer such as is contemplated in the Ceylon (Constitution) Order in Council. The provisions of section 60 of the Order in Council have superseded any other provision that might have been contained in any prior enactment relating to the manner of appointment of public officers.

Accordingly, a person who was duly elected as a member of an Urban Council ceases to be qualified to function as such member by reason of his appointment to the office of grama sevaka subsequently.

**A**PPPLICATION for a writ of *Quo Warranto*.

*V. Tharmalingam*, for the petitioner.

*Nimal Senanayake*, with *Nihal Singarevelu*, for the respondent.

August 11, 1971. WEERAMANTRY, J.—

The Petitioner seeks a writ of *Quo Warranto* in respect of the respondent's membership of the Urban Council, Peliyagoda.

The petitioner concedes that the respondent was duly elected to this Council to represent Ward No. 2 at an election held on December 31st 1968, but contends that he ceased to be qualified to function as a member by reason of his appointment to the office of grama sevaka on July 12th 1970.

In support of his contention that the respondent has been appointed grama sevaka, the petitioner has filed marked "A" a letter from the Government Agent giving the name and address of grama sevaka No. 212 as D. N. Ranepura of 211, Walpola, Batuwatte.

At an earlier stage in this case, some question would appear to have arisen in regard to the genuineness of the Government Agent's letter, and the Court had directed the Registrar to inquire whether this letter was written with the authority of the Government Agent. The Government Agent has replied in the affirmative, and we proceed upon the basis of the correctness of the information contained in this letter.

Now, the main point taken by the respondent is that his name, as given in the petition, is Dayaratne Ranepura, whereas the person who holds the office of Grama Sevaka is D. N. Ranepura. The respondent states, on this basis, that the petitioner has failed to establish that he (the respondent) holds office in this capacity. However, upon the material before us it is clear that a person with the same surname and the same initial as the respondent holds the office of grama sevaka. There is nothing inconsistent or contradictory in the two forms of description and it may well be that the initial D stands for Dayaratne and the initial N is that of another name which is not always repeated when the first name is mentioned in association with the surname.

However that may be, the person best aware of this difference in names, if difference there be, is the respondent himself, and though he denies that he holds office as grama sevaka, he has, for reasons we fail to appreciate if in fact his name is different, failed to file an affidavit to this effect.

We have intimated to learned Counsel for the respondent that we would afford him an opportunity even at this stage to file affidavit to that effect if his position is that the respondent's name is different from that of the Ranepura referred to in the Government Agent's letter and that he does not hold office as grama sevaka. No application has, however, been made on the basis that the respondent proposes to file such an affidavit.

In the result the material before us in the absence of any contrary material furnished by the respondent is sufficient to satisfy that the respondent does hold office as grama sevaka and we have no alternative but to proceed on this basis.

The next question argued before us was a question of law, namely, that the office of grama sevaka is not a public office within the meaning of Section 9 (1) of the Local Authorities Elections Ordinance.

In support of his contention that a grama sevaka is not a holder of a public office under the Crown within the meaning of this Ordinance, Mr. Senanayake has referred us to the Declaration of British Sovereignty Ordinance (Cap. 391) which provides that no person shall be considered entitled to hold office either of the higher or lower class of headmen, unless thereto appointed by written instrument signed in respect to superior chiefs by His Excellency the Governor and for inferior headmen by the Honourable the Resident or provisionally by any Agent of Government thereto duly authorised. Mr. Senanayake submits that this provision is still in force, not having been repealed or amended since its enactment, and that grama sevakas therefore must even today receive their appointments in terms of that section.

He submits that in the absence of a definition of the term "Public Officer" in the Local Authorities Elections Ordinance, we should guide ourselves by the definition of "Public Office" and "Public Officer" contained in the Ceylon (Constitution) Order in Council.

According to the Order in Council a "Public Officer" means any person who holds a paid office, other than a judicial office, as a servant of the Crown in respect of the Government of the Island. He submits that this definition read along with Section 60 means that such Public Officer should be appointed by the Public Service Commission.

Inasmuch as the Declaration of British Sovereignty Ordinance requires appointment of Headmen to be made by the authorities stated therein, he contends that the Public Service Commission cannot make a valid appointment to the office of grama sevaka and therefore a headman is not a Public Officer such as is contemplated in the Ceylon (Constitution) Order in Council.

We may state at the outset that we are not in agreement with Mr. Senanayake's contention that even at this point of time the appointment of headmen should be made under Section 10 of the Declaration of British Sovereignty Ordinance. It seems quite clear from the very phraseology of Section 10 of that Ordinance that that provision has no application to present conditions. It postulates appointment by the Honourable the Resident and this is a condition which quite manifestly cannot be satisfied today when such office has ceased to exist. It seems quite clear that the provisions of Section 60 of the Order in Council superseded any other provision that might have been contained in any prior enactment relating to the manner of appointment of Public Officers.

Consequently, even if appointment by the Public Service Commission be a pre-requisite to a person being a Public Officer, we consider that in the present case that requirement has been satisfied.

We are of the view that there is no merit in the submission that by virtue of the Declaration of British Sovereignty Ordinance a grama sevaka cannot be a Public Officer within the meaning of Section 9 (1) of the Local Authorities Elections Ordinance. It seems beyond argument

that a Headman holds a paid office other than a judicial office as a servant of the Crown in respect of the Government of the Island and is therefore quite clearly disqualified from membership of a local body.

For these reasons we allow the petitioner's application with costs and declare that the respondent is disqualified by reason of his appointment from membership of the Urban Council in question.

DE KRETSEB, J.—I agree.

*Application allowed.*

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