That the Registrar and arbitrator did purport to act under rule 29 is clear from the documentary evidence. Although for some reason the terms of the actual reference by the Registrar to arbitration on August 5 have not been produced or directly testified to, a summons by the arbitrator to the defendant, dated September 22, calling upon him to appear at the pending arbitration proceedings, was produced, wherein the arbitrator stated that "I am acting in terms of regulation 29". And the award itself purports to be made "under rule 29 of the Rules framed under the Co-operative Societies Ordinance, 1921". That being so, I do not think the plaintiffs can be heard to argue that the reference and award, having been shown to be *ultra vires* rule 29, must be deemed to have been made under section 45. This might well have embarrassed the defendant, who might not have contested the award if it had purported to be made under section 45. It is irrelevant that he has now in fact argued it to be *ultra vires* both under rule 29 and section 45. On this point I entirely concur with the decision of our brother Gratiaen in *Illangakoon v. Bogollagama* (*supra*), when he observed :— "The clear absence of jurisdiction in the first respondent to adjudicate upon the dispute under Rule 29 was tacitly conceded by Counsel who represented the Registrar of Co-operative Societies before me. It was contended, however, that the first respondent was vested with jurisdiction to make an award under a different provision of the law, namely, sections 45 (1) (*c*) and 45 (2) of the present Co-operative Societies Ordinance, Chapter 107. Even if this position was tenable, I fail to see how any person who purported to exercise extraordinary powers under one provision of the law can subsequently be heard to claim that he had some alternative jurisdiction (which was not notified to the party who challenged his powers) to act in terms of a different provision of the law." This court took the same view in *Ekanayaka v. The Prince of Wales Co-operative Society, Limited* [1]. In the latter case also the power of the District Court to refuse to act upon an award appearing on the face of it (as here) to be *ultra vires* was affirmed.

On these grounds the order of the learned District Judge must be upheld, and the appeal is dismissed with costs.

NAGALINGAM J.—I agree.

Appeal dismissed.

1949 *Present :* **Gratiaen J.**

JAYASINGHE, Petitioner, *and* DE SOYSA, Respondent

S. C. 129—Application for a Writ of Quo Warranto

Writ of quo warranto—*Teacher in privately owned Assisted School—Not disqualified to be member of a local authority—Local Authorities Elections Ordinance, No. 53 of 1946, section 10 (1) (d).*

A teacher employed in a privately owned Assisted School does not hold a public office under the Crown within the meaning of section 10 (1) (*d*) of the Local Authorities Elections Ordinance and is, therefore, not disqualified to be elected as a member of a local authority.

[1] *(1949) 50 N. L. R. 297.*

THIS was an application for a writ of *quo warranto* challenging the respondent's right to exercise the office of a member of the Municipal Council of Kurunegala.

E. B. Wikramanayake, K.C., with *M. A. M. Hussain*, for the petitioner.

S. Nadesan, with *D. S. Jayawickrama*, for the respondent.

Cur. adv. vult.

November 16, 1949. GRATIAEN J.—

This application came up before me on 11th November, 1949. At the conclusion of the argument I made order discharging the rule with costs, and I now proceed to record the grounds for my decision.

The facts are not in dispute. The respondent was elected a member of the Municipal Council of Kurunegala on 25th November, 1948, and has functioned in that office since 5th January, 1949. He has at all relevant times been a teacher employed at Christ Church College of which the Reverend Derek Karunaratne is Manager. The school is not a Government school but receives an annual grant from the Director of Education in accordance with the School Grants (Revised Conditions) Regulations, 1945. The school recently entered what is commonly known as the Free Education Scheme, but subject to the statutory rights of supervision and control which the Director enjoys over Assisted Schools, Christ Church College still retains, for what it is worth, its former status as a privately owned educational institution. The annual grant represents a contribution from the Government towards the expenses incurred by the School manager and is calculated in accordance with the rules of the Code governing Assisted English Schools. The Regulations provide that the salary payable to a teacher by the Manager may either, for convenience, be paid direct to him by the Government *or* paid to the Manager at agreed intervals. In the case of Christ Church College, apparently, the former alternative has been adopted.

The petitioner claims that in these circumstances the respondent is the "holder of a public office under the Crown in Ceylon" within the meaning of Section 10 (1) (*d*) of the Local Authorities Elections Ordinance, No. 53 of 1946, and is accordingly disqualified from sitting or voting as a member of any local authority. The petitioner therefore challenges the respondent's right to exercise the office of a member of the Municipal Council of Kurunegala.

In my opinion the petitioner's application is devoid of merit. The respondent does not hold any "public office under the Crown". His engagement as a teacher at Christ Church College is referable to a contract of employment between himself and the Manager of a privately owned Assisted School. The circumstance that the Government contributes the whole or part of the salary payable to him *by the Manager* is besides the point, and does not either establish privity between him and the Crown or alter the intrinsic character of his personal contract of service with the Manager. Should he not receive his salary for any month in terms of the contract his remedy would be against the Manager and not

the Crown. If the grant be withheld by the Director, the teacher's right to claim his salary is not affected. Although a Manager is precluded by the Code from employing or discontinuing a teacher without the prior approval of the Director of Education, this does not in any way establish privity of contract between the teacher and the Director. If one applies to the respondent the tests laid down for determining whether a person is a servant of the Crown—namely (1) who makes the appointment? (2) who dismisses him? (3) who pays his salary? (vide *Podi Singho v. Goonesinghe* [1]), I would say that the answer to each question would be "the Reverend Derek Karunaratne" and not "the Director of Education". No doubt the Director controls the appointment and the dismissal, and no doubt the public revenue may be the *source* from which a sum equivalent to the petitioner's salary payable by the Manager is derived, but in each case the privity of contract between the master and his servant remains wholly unaffected. Even if the payment be made direct to the teacher from public funds, it is made *on behalf of* the Manager who is the real debtor under the contract of service. Mr. Wikremanayake referred me to *Bowers v. Harding* [2] where it was held that the master of a "national school" in England held "a *public* office or employment of profit" within the meaning of schedule E of the Income Tax Acts. I find myself unable to derive much assistance from this ruling in the absence of some indication of the extent, if any, to which the constitution of a national school in England approximates to that of a privately owned Assisted School in Ceylon.

For the reasons which I have now recorded I refused the petitioner's application with costs which were fixed at Rs. 315.

Application dismissed.

1949 *Present:* **Basnayake J.**

PERADENIYA SERVICE BUS CO., Petitioner, *and* SRI LANKA OMNIBUS CO., Respondent

Application No. 28—Case stated under section 4 of the Motor Car Ordinance, No. 45 of 1938

Omnibus Service Licensing Ordinance, No. 47 of 1942—Procedure by which Tribunals acting under the Ordinance should be guided—Case stated for opinion of Supreme Court—Form in which it should be sent up—Section 13 (8)—Motor Car Ordinance, No. 45 of 1938, section 4.

When a Tribunal of Appeal states a case under section 13 (8) of the Omnibus Service Licensing Ordinance, No. 47 of 1942, it should set out in full the facts on which it bases its decision, its findings thereon and its decision on the questions of law argued before it. It should also state the questions on which the opinion of the Supreme Court is desired.

A case stated must be signed by all the members of the Tribunal of Appeal and not by the Chairman alone.

[1] *(1948) 49 N. L. R. 344 at page 346.* [2] *(1891) 1 Q. B. 560.*