

1933

Present : Dalton A.C.J. and Poyser J.

JAYASINGHE v. JAYATILEKE.

107—D. C. Colombo, 40,518.

*Public Servants' (Liabilities) Ordinance—Registrar of Births, Deaths, and Marriages—Is he a public servant?—Ordinance No. 2 of 1899, s. 2.*

A registrar of births, deaths, and marriages is not a public servant within the meaning of section 2 of the Public Servants' (Liabilities) Ordinance, No. 2 of 1899.

THE plaintiff sued the defendant to recover the sum of Rs. 1,000 and interest due on a usufructuary mortgage. The defendant admitted that the sum was due but claimed in reconvention the sum of Rs. 1,250 for damages caused by plaintiff's neglect of the mortgaged premises. Judgment was given for the plaintiff, the defendant's claim being dismissed with costs. When plaintiff took out writ and seized certain property in execution the defendant claimed the benefit of the Public Servants' (Liabilities) Ordinance. He set out in his petition that he was registrar of births, deaths, and marriages. The learned District Judge held that the defendant was a public servant within the meaning of the Ordinance.

*Hayley, K.C.* (with him *Canjemanaden*), for plaintiff, appellant.—A registrar of births, deaths, and marriages cannot claim the benefit of the Public Servants' (Liabilities) Ordinance. That Ordinance was enacted to protect a certain class of public servants, viz., those employed in the permanent service of the Colony. Section 3 enumerates the immunities and the conditions governing them. Sub-section (2) of section 3 states that public servants who are in the receipt of a salary of more than Rs. 300 per mensem are not exempt from liability. The salary must be in respect of a fixed appointment. It is submitted that only those holding fixed appointments are entitled to the benefits which the Ordinance provides. What is a "fixed" appointment would depend on the appointing authority and on the servants' right to receive a pension or gratuity at retirement (*Perera v. Perera et al.*<sup>1</sup>, *Palaniappa Chetty v. Fernando*<sup>2</sup>). A registrar of births and deaths is appointed by the Registrar-General under the Registration of Births and Deaths Ordinance, No. 1 of 1895, and he could be dismissed by the Registrar-General without any reference to the Head of the Government. His duties indicate that his job is not a whole-time one, and if he be a non-medical registrar, he is not deemed to be a public servant within the meaning of section 19 of the Penal Code (*vide* section 7 (2) of Ordinance No. 1 of 1895). *Saibo v. Punchirala*<sup>3</sup> will not apply to the circumstances of this case. In that case it was held by De Sampayo J. that an arachchi and police headman is a public servant within the meaning of the Ordinance. But an arachchi and a police headman is a public servant under section 19 of the Penal Code. His is a fixed appointment and it is pensionable. He performs duties which

<sup>1</sup> 13 N. L. R. 257.<sup>2</sup> 1 A. C. R. 27.<sup>3</sup> 18 N. L. R. 249.

require undivided attention. They do not bear the casual character which the work of a registrar of births and deaths bears. The test seems to be whether the appointment calls for continuous work (*Weerasinghe v. Wanigasinghe*<sup>1</sup>).

*H. V. Perera*, for defendant, respondent.—“Public servant” is defined in section 2 of the Ordinance as a person who is employed in the service of the Government of the Colony. It is wide enough to include a registrar of births, deaths, and marriages. He performs work for which he is paid and he actively assists the Registrar-General in the administration of a Government department. He has to be in his office every day and his work is continuous. See section 11 of Ordinance No. 1 of 1895. The Ordinance was enacted not so much to protect the public servant as to protect public administration. (*Weerasinghe v. Wanigasinghe (supra)*.) If registrars of births, deaths, and marriages are not to come within the privileged class, it would injuriously affect public business. Their work is on a par with the work of an arachchi or police headman. That they are not public servants under the Public Servants’ (Liabilities) Ordinance does not necessarily follow from the fact that they are not public servants under section 19 of the Penal Code.

*Hayley, K.C.* in reply.—The appointment of a registrar of births and deaths is governed by section 7 of Ordinance No. 1 of 1895, and the appointment of a registrar of marriages, other than Kandyan and Muhammadan, by Ordinance No. 19 of 1907. In either case it is the Registrar-General that is the appointing authority. Under the Muhammadan Marriage Registration Ordinance, No. 8 of 1886, any “levvai” could be appointed a registrar of Muhammadan Marriages and if respondents’ contention is right, he could be deemed to be a public servant within the meaning of the Public Servants’ (Liabilities) Ordinance.

*Cur. adv. vult.*

November 10, 1933. DALTON A.C.J.—

The question for decision on this appeal is whether a registrar of births, deaths, and marriages is a public servant within the meaning of the Public Servants’ (Liabilities) Ordinance, No. 2 of 1899. That Ordinance is enacted for the purpose of protecting public servants from legal proceedings in respect of certain liabilities.

The respondent to this appeal was sued by the plaintiff (appellant) to recover the sum of Rs. 1,000 due on a usufructuary mortgage bond, with interest. In his answer he admitted the execution of the bond and the receipt of the money thereon but claimed in reconvention the sum of Rs. 1,250 for damages as a result of plaintiff’s alleged neglect of the mortgaged premises.

Judgment was given for plaintiff for the amount claimed, the trial Judge finding that defendant suffered no damages. Plaintiff duly took out writ, and certain property besides the mortgaged property was seized, when, for the first time, respondent claimed the benefit of the Public Servants’ (Liabilities) Ordinance. He petitioned that the writ be recalled and that he be discharged from the action. He set out in his

<sup>1</sup> 34 N. I. R. 185

petition, which was supported by affidavit, that he was registrar of births, deaths, and marriages at Kahatuduwa in the Udugaha pattu of Salpiti korale.

On this petition, without further evidence, the trial Judge held petitioner (respondent to appeal) was a public servant within the meaning of the Ordinance. From this order plaintiff appeals.

The onus was on the defendant to establish that he was entitled to the benefit he claims. The only fact he proved was that he was registrar of births, deaths, and marriages at the place he named. For other material we were referred to the provisions of the Ordinances under which the appointments are made.

The appointment and work of a registrar of births and deaths is governed by Ordinance No. 1 of 1895. He is appointed and can be removed at pleasure by the Registrar-General, is required to attend at his office in his division on such days and hours as the Registrar-General appoints, and is paid for such work as he does by fees. Section 7 (2) provides that if any medical practitioner is appointed a registrar of births and deaths, he shall, during such employment be deemed to be a "public servant" within the meaning of section 19 of the Ceylon Penal Code. In view of this special provision it seems that a registrar who is not a medical practitioner is not a public servant within the meaning of section 19 of the Penal Code; otherwise section 7 (2) would be unnecessary. There are, however, persons who are public servants within the meaning of section 19, such as jurymen or arbitrators who clearly are not public servants under the provisions of Ordinance No. 2 of 1899.

The appointment of registrars of marriages, other than the marriages of Kandyans and Muhammadans, is governed by Ordinance No. 19 of 1907. These appointments are also made by the Registrar-General, during his pleasure, and payment is by fees. Under the Muhammadan Marriage Registration Ordinance, 1886, any Muhammadan levvai may be appointed a registrar of marriages, and if the trial Judge is correct, would be a public servant within the meaning of Ordinance No. 2 of 1899.

To obtain the benefits of and come within the provisions of the latter Ordinance, a person must bring himself within the provisions of sections 2 and 3 of the Ordinance. The respondent here urges he is "a person employed in the service of the Government of the Colony". In construing the word "employed", however, it is not always easy to see what test has to be applied. It has been held for instance that a person who works for a daily wage, such as a tide-waiter at the Customs, a railway department labourer or a public works labourer, although they are certainly employed in the service of the Government and are paid out of Government funds, are not public servants within the meaning of the Ordinance (*Palaniappa Chetty v. Fernando*<sup>1</sup>). The test applied in that case, although the tide-waiter in question had been at the Customs over 14 years, seems to have been that such persons held no fixed appointment in the sense of any permanency, but were employed by the day. It was also pointed out that they were not pensionable.

In *Saibo v. Punchirala*<sup>2</sup> De Sampayo J. held that a person holding the office of arachchi and police headman was a public servant within the

<sup>1</sup> 1 A. C. R. 27.

<sup>2</sup> 18 N. L. R. 249.

meaning of the Ordinance. There is no doubt of course (*vide illustrations*) that such an officer is a public servant under the provisions of section 19 of the Penal Code, and in my opinion, if the tests of permanency of employment, continuity of work, and volume of work as opposed to casualness of work be applied, a police headman is in a very different position from a registrar of births, deaths, and marriages. The work of the latter is doubtless intermittent and occasional. It is very far from being what one would term whole-time employment.

This test of continuity of work with the exclusive right of the Government to the services of the person concerned during the employment as opposed to casual or occasional work was stressed in the case of *Weerasinghe v. Wanigasinghe*<sup>1</sup>, in which case it was pointed out that the purport of the Ordinance was to prevent the obstruction of public business as a consequence of legal proceedings against public servants. The respondent, in my opinion, fails to satisfy this test. He therefore has failed to show that he is employed in the service of the Government of the Colony within the meaning of section 2 of Ordinance No. 2 of 1899. He is therefore not entitled to the benefits of the Ordinance and the appeal must be allowed with costs.

*Appeal allowed.*

POYSER J.—I agree.

