

1967

Present : H. N. G. Fernando, C.J., and Silva, J.

W. PIYASENA, Petitioner, and P. V. W. SILVA, Respondent

S. C. 48/66—Application for a Writ of Quo Warranto in terms of Section 42 of the Courts Ordinance (Cap. 6) in respect of the election of a Member to Ward No. 1 of the Ambalangoda Urban Council

Local Authorities Elections Ordinance (Cap. 262)—Section 9 (1) (d)—Person holding appointment at a Government school—Ineligibility for election as member of an Urban Council—Effect of interdiction from duty.

A person holding an appointment and receiving a salary at a school which became vested in the Government after the Assisted Schools and Training Colleges (Supplementary Provisions) Act No. 8 of 1961 was passed holds a public office under the Crown within the meaning of section 9 (1) (d) of the Local Authorities Elections Ordinance and is, therefore, disqualified for election as a member of an Urban Council, even though he is under interdiction from duty at the time of the election. Interdiction involves only the interruption of duties and not the termination of an office.

APPPLICATION for a writ of *quo warranto* challenging the validity of the election of the respondent as member of an Urban Council.

W. D. Gunasekera, for the petitioner.

Nimal Senanayake, with *P. Nanayakkara*, for the respondent.

Cur. adv. vult.

August 29, 1967. H. N. G. FERNANDO, C.J.—

At the election of members of the Ambalangoda Urban Council held in 1965, the respondent was by notice duly published in the *Gazette* of 31st December 1965 declared to have been elected member for Ward No. 1 of the Council. This is an application for a Writ of Quo Warranto to declare the election null and void on the ground that the respondent was at the time of the election disqualified for such election because he held, and still holds, a public office under the Crown in Ceylon. The disqualification attaches by reason of the provisions of Section 9 (1) (d) of the Local Authorities Elections Ordinance (Cap. 262).

The respondent had for some years been employed as a teacher in what were known as "Assisted Schools" which were not Government Schools, although they received assistance from public funds in the form of grants. But from and after the passing of the Assisted Schools and Training Colleges (Supplementary Provisions) Act, No. 8 of 1961, a number of such schools became vested in the Government; thereafter all appointments of teachers to such schools were made directly by the Government and their salaries were paid directly out of public funds. Since the passing of the Act of 1961 therefore the post of teacher in every such school is a public office. The particular Government school at which the respondent was employed at that time was St. Mary's School, Elpitiya. At that time too, the respondent was a member of the Ambalangoda Urban Council, and his evidence is that towards the end of 1962, he was requested by the Department of Education to resign his political office. He refused to do so, and by letter of 31st October 1962 his services as a teacher were terminated.

According to the respondent, a circular was sent after the passing of the Act of 1961 asking teachers at schools taken over under the Act to state whether they wished to become Government teachers. The respondent states that he then asked for such appointment, but subject to the condition that he would have political rights. The circular or the respondent's reply to it have not been produced. The respondent's chief grievance now appears to be that his expectation of retaining political rights has been defeated. But even if he justly has such a grievance, no assurance from the Department of Education, or from any other authority, is now of avail to him.

Upon the evidence recorded in this Court, it is not quite clear whether all proper formalities were observed in regard to the absorption of the respondent into the public service or to his postings thereafter. But the letters of June 1965 to and from him, and the pay sheets for June and September 1965 clearly show that prior to the local election held that year the respondent held an appointment at a Government school and received his salary as such. He does not deny that he held that appointment at the time of the election or that he is still in receipt of

part salary in that capacity. He receives part salary because he was interdicted from duty in August 1965 for reasons apparently not relevant for present purposes. Interdiction involves only the interruption of duties and not the termination of an office.

I hold therefore that the respondent was at the time of his election disqualified under Section 9 (1) of Chapter 262 for holding office as a member of the Ambalangoda Urban Council. The declaration asked for by the petitioner is granted with costs fixed at Rs. 157.50.

SILVA, J.—I agree.

Application allowed.

