

1951

Present: Nagalingam J.

O. T. DE SILVA, Petitioner, and K. S. DE SILVA, Respondent

S. C. 49—In the Matter of an Application for a Writ of Quo Warranto re the office of Member for Ward No. 1 of the Hatton-Dickoya Urban Council.

Local Authorities Elections Ordinance, No. 53 of 1946—Teacher in Assisted English School—Qualification for membership of a local authority—Section 10 (1) (d).

A teacher in an Assisted English School does not hold office under the Crown within the meaning of Section 10 (1) (d) of the Local Authorities Elections Ordinance, No. 53 of 1946.

THIS was an application for a writ of *quo warranto* challenging the election of the respondent as member for Ward No. 1 of the Hatton-Dickoya Urban Council.

A. B. Perera, with T. W. Rajaratnam, for the petitioner.

Colvin R. de Silva, with M. M. Kumarakulasingham, G. T. Samarawickrema and G. C. Niles for the respondent.

Cur. adv. vult.

October 16, 1951. NAGALINGAM J.—

The petitioner challenges the election of the respondent as member for Ward No. 1 of the Hatton-Dickoya Urban Council on the ground that the latter was disqualified from being so elected as he was the holder of a public office under the Crown within the meaning of section 10 (1) (d) of the Local Authorities Elections Ordinance, No. 53 of 1946.

Admittedly the respondent is a teacher on the staff of the Sri Pada College at Hatton. The evidence of the Principal of the institution shows that the College belongs to the Buddhist Theosophical Society and that the appointments to the staff of the College are made by the General Manager of Buddhist Schools, who is an official appointed by the Colombo Buddhist Theosophical Society for the purpose of managing and controlling the several institutions established and conducted by it.

The letter of appointment issued to the respondent has been produced by him marked "A" and that shows that the contract of service was entered into by the respondent with the Colombo Buddhist Theosophical Society and that under the terms of his appointment he is liable to be transferred to any other school of the Society (subject to certain limitations which are not material for the purpose of the present discussion), that his appointment was to be on probation for one year, that he was not to leave the school except at the end of a school year and that he should

give at least three months' notice of his intention to leave the school and that he could with the approval of the General Manager of Buddhist Schools leave the school at any time.

If these were the only factors that have to be taken into consideration for determining the question as to who is the respondent's employer, there can be little room for argument that it was the Buddhist Theosophical Society. But there are other matters, says Counsel for the petitioner, which compel one to answer the question differently.

It is said that the respondent joined the School on 21st February, 1948, after what is popularly termed the Free Education Scheme came into operation, which was in 1945—*vide* Regulation 7 of the School Grants (Revised Conditions) Regulations made by the Executive Committee of Education under section 32 of the Education Ordinance, No. 31 of 1939—and after the school had entered the scheme.

As a result of the school entering the scheme it is urged that the employment of the respondent became subject to certain statutory provisions of, as well as to departmental regulations framed under the Education Ordinance. Clause 16 of the Code of Regulations for Assisted English Schools (edition corrected up to May 31, 1948) in sub-section 3 provides that the appointment of a teacher to a school, that is to say, a school coming within the denomination of Assisted English Schools, shall not be made except with the previous approval of the Director, and by sub-clause 4 enacts that the services of a teacher shall not be discontinued except with the previous approval of the Director. In regard to the teachers who were appointed to the staff of schools that had entered the Free Education Scheme the Government also undertook by the aforesaid Regulations of 1945 to pay their salaries either directly to them or to the Manager of the School.

The petitioner emphasises these two aspects, namely, firstly that neither the appointment nor dismissal can take place without the approval of the Director and, secondly, that the salaries of teachers are paid directly by Government for his contention that the respondent is one who holds a public office under the Crown. The powers of approval of appointments vested in the Director are to ensure, as the other sub-sections of Clause 16 of the Code would indicate, that satisfactory qualifications are possessed by teachers who are appointed and that not more than the number of teachers adequate for imparting satisfactory instruction are employed. The first ground would indicate the Government's solicitousness to ensure that proper education is imparted by competent teachers and the second ground that the Government is not called upon to make payment for teachers more than are necessary for the efficient functioning of the School. The approval by the Director in regard to dismissal is vested in him for the obvious purpose of protecting the interests of teachers.

It may be correct to say that as in the last resort the power of veto is vested in the Director, both appointments and dismissals are in the hands of the Director himself. But on the other hand the Director himself cannot appoint or dismiss a teacher. While the Director may give his approval to the appointment of a teacher, the Manager need not necessarily appoint him: but, of course, after appointment the Manager cannot dismiss the teacher without the approval of the Director. In the latter

case, too, even where the Director sanctions dismissal, the Manager can go back upon his decision to discontinue that teacher and allow him to continue in employment. In other words, the Director cannot himself either dismiss or employ a teacher but he has to exercise the powers of veto vested in him for the benefit of pupils and teachers with a view to enforcing and carrying out the policy of Government in educational matters. In exercising his powers, therefore, the Director does not enter into a contract of service with any teacher employed in an Assisted School.

To turn next to the aspect of salaries to teachers, the payment so made by Government to teachers is expressly stated to be part of the *grant* which the Government makes to the management of a School. Regulation 4 of the Regulations of 1945 expressly states that the grant payable from state funds shall consist of (a) *the amount of salaries payable* to teachers and (b) an amount to be known as the maintenance and equipment grant. The term "grant" itself is defined in the Education Ordinance in section 50 as any form of subvention from state funds, *including salaries paid direct to the teachers by the Department*. So that, the salaries of teachers paid by Government constitute nothing more nor less than a subsidy made by Government to the management of the school based on its educational policy.

The expression "salaries paid direct to the teachers by the Department" also throws light on the relationship between the Government and the teacher. If the teacher were the Department's or Government's employee and there was an obligation on the part of Government to pay, there would have been no purpose in alluding to the payment being made *direct* to the teacher, for the liability of Government could only be discharged by payment to the teacher, and that would normally be by payment direct to the teacher and no occasion would have arisen for any express statement to that effect. But by employing this expression attention is rather drawn to the verity that salaries are not *payable by Government* direct to the teachers though in fact paid direct to them.

Furthermore, by the pointed explanation that "salaries paid direct to the teachers" are comprehended within the term "grant", a clear indication is given that the salaries paid are paid *qua* grant, and grant, it must be remembered, is made as provided by clause 29 of the Code to the school and not to the teacher. Besides, by clause 4 of Regulation 4 of the Regulations of 1945, express provision is made for the payment of teachers' salaries to the Manager of the School where salaries are not made direct to the teachers, indicating that the obligation, if the use of that term may be permitted, of the Government is to the Manager and not to the teacher.

Moreover, the salary of a teacher itself is referred to as the Government's contribution in clause 37 of the Code, and the special significance of the term "contribution" gains in importance when regulation 4 (2) of the Regulations of 1945 is looked at, for it provides that the salary of each teacher shall be calculated in accordance with the salary scales prescribed by the Code, and no sum paid to any teacher in excess of the salary payable according to the scales shall be taken into consideration. Quite clearly, then, the Manager of the school may contract with a teacher, if he so so desires, to pay him a salary in excess of what is prescribed by the

Code, and in such an event, while the Government will pay only so much of the teacher's salary as would fall within the scale prescribed by the Code, the excess would have to be paid by the Manager.

That apart from the contract entered into by the respondent with the General Manager of Buddhist Schools, no other contract has been entered by him with the Director of Government is not gainsaid. There is no contractual relationship between the Government and the teacher in regard to his pay or conditions of service. It is true, for instance, that where the teacher takes leave or absents himself for a longer period than is permitted by the Code, Government will refuse to pay his full salary but only pay such reduced salary in accordance with the Regulations; but here, again, there is nothing to prevent the Manager and the teacher making such stipulations as they may think proper in regard to leave or absence in substitution of those fixed by Government in the Code. Again, should the Government for some reason or other decide not to pay the salaries of teachers, the liability of the Manager to pay would yet continue, and it has not been suggested that a teacher would be entitled to sue the Government for recovery of his salary.

The payment, therefore, by Government of the salaries to the teacher, though made direct, cannot but amount in law to payment on behalf of the Manager and in liquidation of the Manager's liability to the teacher.

In this view of the matter, it cannot but follow that the respondent is not a person holding an office under the Crown.

Mr. Perera for the petitioner strongly pressed upon me the case of *Transvaal Provincial Administration v. Molokone*¹ where, after considering various regulations, the view was reached that the teacher there was a servant of the Crown, but as the judgment itself clearly indicates, the opinion was based upon a construction of the relevant regulations, and the case is of little assistance to us here unless the regulations themselves have some degree of identity with ours. In that very judgment a case under the name of *Wentzel v. Krige et al.*² is referred to. The facts in that case would seem to be similar to the facts of the present case, and there it was held that a teacher in a public school was not holding an office of profit under the Government. What provisions of the law the Judges had to consider in that case, however, do not appear from the summary of the judgment. The only safe rule is that each case must be decided on its own facts.

Having regard, therefore, to the facts and circumstances relating to the employment of the respondent, I am clearly of opinion that the respondent does not hold office under the Crown. It is unnecessary to consider the further question whether the respondent holds an office which could be deemed to be a public office.

The application is refused with costs fixed at thirty-five guineas.

Application refused.

¹ *S. African L. R., Transvaal Provincial & Local Division, 1931, page 435.*

² *27. S. C. 123.*