

1967 Present : Abeyesundere, J., and Manicavasagar, J.

D. THENABANDU, Petitioner, and R. SAMARASEKERA
(Registrar-General), Respondent

*S. C. 303/67—Application for a Mandate in the nature of a Writ of
Certiorari on the Registrar-General*

*Registrar of Births, Marriages and Deaths—Appointment and dismissal—No right to
be heard before dismissal—Marriage Registration Ordinance, s. 6—Births and
Deaths Registration Ordinance—Interpretation Ordinance (Cap. 2), ss. 12,
14 (f)—Scope of principle audi alteram partem—Certiorari—Constitutional
law.*

A person who has been appointed by the Registrar-General to be a Registrar of Births and Deaths under the Births and Deaths Registration Ordinance, and a Registrar of Marriages under section 6 of the Marriage Registration Ordinance, holds office at the pleasure of the appointing authority. He may therefore be dismissed from both offices by the Registrar-General without being given an opportunity to appear and lead evidence to vindicate his innocence.

The Births and Deaths Registration Ordinance does not contain any provision specifying the appointing authority in the case of an appointment to the office of Registrar of Births and Deaths. Therefore section 12 of the Interpretation Ordinance applies and the appointment may be made by the Minister or an officer authorised in that behalf by the Minister.

By virtue of section 14 (f) of the Interpretation Ordinance the Registrar-General, as the authority empowered to appoint a Registrar of Births and Deaths, has the unfettered power to dismiss such a Registrar appointed by him.

The principle *audi alteram partem* does not apply in the case of dismissal from an office where the grounds of dismissal are not specified or where there is no procedure prescribed which should be followed before dismissal.

APPPLICATION for a writ of *certiorari* on the Registrar-General.

Colvin R. de Silva, with *F. R. Dias Bandaranaike*, *P. D. W. de Silva*, *Bala Nadarajah* and *N. Dias*, for the Petitioner.

H. L. de Silva, Crown Counsel, for the Respondent.

November 26, 1967. ABEYESUNDERE, J.—

The Petitioner in this case who had been appointed by the Registrar-General to be a Registrar of Births and Deaths and a Registrar of Marriages was informed by letter dated 30th May, 1967 that he was dismissed from both offices by the Registrar-General with effect from 27th May, 1967. Prior to his dismissal he had been asked to show cause why he should not be dismissed on the two charges specified in paragraph 8 of the petition relating to the registration of the marriage of a minor girl without the consent of her parents. The petitioner had asked for an inquiry and an opportunity to appear and lead evidence to vindicate his innocence. Such an opportunity was not given to the Petitioner. He prays for a writ of *certiorari* to quash the order of dismissal.

The petitioner had been appointed a Registrar of Marriages under Section 6 of the Marriage Registration Ordinance. That section empowers the appointing authority to remove a Registrar at pleasure. As the petitioner held the office of Registrar of Marriages at the pleasure of the appointing authority, he had no right in law to be heard before he was dismissed. No writ of *certiorari* therefore lies in respect of the petitioner's dismissal from the office of Registrar of Marriages.

The Births and Deaths Registration Ordinance does not contain provision specifying the appointing authority in the case of appointments to the office of Registrar of Births and Deaths. Therefore Section 12 of the Interpretation Ordinance applies and under that Section the appointment of a Registrar of Births and Deaths may be made by the Minister or an officer authorised in that behalf by the Minister. It was not disputed in this case that the Registrar-General who had appointed the Petitioner as a Registrar of Births and Deaths had received the authorisation referred to in Section 12 of the Interpretation Ordinance. By virtue of Section 14 (f) of the Interpretation Ordinance the Registrar-General, as the authority empowered to appoint a Registrar of Births and Deaths, has the unfettered power to dismiss such a Registrar appointed by him. There is no statutory provision in the Births and Deaths Registration Ordinance or any other statute specifying the grounds of dismissal of a Registrar of Births and Deaths nor is there any statutory procedure laid down which is to be observed before the dismissal of such a Registrar. The decision of this Court in the case of *Kulatunga v. The Board of Directors of the Co-operative Wholesale Establishment*¹ states, relying on the decision of the House of Lords in the case of *Ridge v. Baldwin*², that the principle of *audi alteram partem* does not apply in the case of dismissal.

¹ (1963) 66 N. L. R. 169.

² (1963) 2 A. E. R. 66.

from an office where the grounds of dismissal are not specified or where there is no procedure prescribed which should be followed before dismissal. Therefore the fact that the Petitioner was not given an opportunity to attend an inquiry and lead evidence does not vitiate the order of dismissal. Consequently no writ of certiorari lies in regard to the order dismissing the petitioner from the office of Registrar of Births and Deaths.

The Petition is dismissed with costs payable by the Petitioner to the 1st Respondent. We fix the costs at Rs. 262·50.

MANICAVASAGAR, J.—I agree.

Application dismissed.

