

1962

Present: Weerasooriya, S.P.J.

A. P. K. PATHIRANA, Petitioner, and A. S. GOONESEKERA
(Chairman, Village Committee, Otara Palata) *et al.*, Respondents

*S. C. 176—Application for a Writ of Mandamus on the Chairman,
V. C., Otara Palata*

Local Government Service—Member thereof employed under a local authority—Interdiction by the Local Government Service Commission—Liability of the local authority to pay emoluments during the period of interdiction—Right of interdicted person to apply for a writ of mandamus—Local Government Service Ordinance (Cap. 264), ss. 11 (1) (c), 14 (1), 15, 23 (1), 27, 67 (1)—Local Government Service Regulations, 1947, Regulation 51—Scope of Mandamus.

Where a member of the Local Government Service who has been appointed to a post in the service of a local authority is interdicted by the Local Government Service Commission while in the service of that local authority, paragraph (iv) of Regulation 51 of the Local Government Service Regulations of 1947, read with section 23 (1) of the Local Government Service Ordinance, renders the local authority liable to pay out of its funds one half (at least) of his emoluments during his interdiction. In such a case, the duties imposed on the local authority, which is a public body, are of a public character and, therefore, liable to be enforced by *Mandamus*, although the interdicted person could have filed a regular action for the recovery of the emoluments.

The Court would not, in the exercise of its discretion, refuse a writ of *Mandamus* on the sole ground that another remedy is open to the applicant, unless such remedy is shown to be equally effectual as well as convenient.

Where officials having a public duty to perform, refuse to perform it, *Mandamus* will lie, on the application of a person interested, to compel them to do so. The rule would also apply where a public body fails to perform a public duty with which it is charged.

APPPLICATION for a writ of *Mandamus* on the Chairman of a Village Committee, and on the Village Committee.

M. S. M. Nazeem, with *M. T. M. Sivardeen*, for the petitioner.

H. A. Koattegoda, with *M. L. de Silva*, for the 1st respondent.

M. L. de Silva, with *K. D. U. Jayasekera*, for the 2nd respondent.

C. J. Mervyn Fernando, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

December 21, 1962. WEERASOORIYA, S.P.J.—

The petitioner is a member of the Local Government Service constituted under section 15 of the Local Government Service Ordinance (Cap. 264), and at the times material to this application he was the Secretary of the Village Committee, Otara Palata, the 2nd respondent, to which post he had been appointed by the Local Government Service Commission. Prior to this appointment he was the Secretary of the Deniyaya Village Committee. While serving in that post certain allegations against him of misappropriation of funds, and falsification of accounts, of the Deniyaya Village Committee came to be investigated, and pending the investigation the Local Government Service Commission transferred him as Secretary of the 2nd respondent. Subsequently, as a result of the petitioner being charged in the Magistrate's Court of Matara with the offences of misappropriation and falsification of accounts, the Commission made an order interdicting him, and directed the 1st respondent, as Chairman, to give effect to this order, which he did as from the 30th April, 1960, but under protest.

The Commission also informed the 1st respondent that during the period of interdiction the petitioner should be paid one-half his emoluments. Both the 1st and 2nd respondents, however, disclaim liability to pay one-half the emoluments of the petitioner, or any sum at all, from the date of the interdiction, and have accordingly not paid him any part of his emoluments since that date. Hence this application.

Section 23 (1) of the Local Government Service Ordinance (hereafter referred to as "the Ordinance") is as follows:—

"Every local authority shall cause and permit each member of the service who is appointed by the Commission to any post in the service of that authority to perform and discharge the functions and duties of that post, and shall, out of its funds, pay the salary and allowances of each such member."

It is common ground that, since at the time of the petitioner's interdiction he was holding the post of Secretary of the 2nd respondent, up to that time, at least, the latter was liable to pay out of its funds the

salary and allowances of the petitioner. But counsel for the 2nd respondent contended that such liability exists only so long as the officer concerned is able to perform and discharge the functions and duties of his post, and that as the order of interdiction necessarily meant that the petitioner was debarred from functioning in his post for the duration of the interdiction, the liability of the 2nd respondent to pay the petitioner's salary and allowances ceased forthwith from the date of the order.

Section 23 (1), it will be noted, does not specifically provide for a case where a member of the Local Government Service who has been appointed to a post in the service of a local authority is interdicted while in the service of that local authority. The power of the Local Government Service Commission to interdict a member of the Service is derived from section 11 (1) (c) of the Ordinance. Section 27, read with section 67 (1), empowers the Commission to make regulations, *inter alia*, for the dismissal, interdiction or punishment of members of the Service. The only regulation relating to interdiction which counsel for the petitioner referred me to is Regulation 51 of the Local Government Service Regulations, 1947, published in the Ceylon Government Gazette No. 9,729 of the 4th July, 1947. This regulation consists of five paragraphs. Paragraphs (i) to (iii) deal with interdictions by the Mayor of a Municipal Council, or Chairman of an Urban Council or other local authority. Paragraph (iv) deals with the emoluments payable to a member of the Service who has been interdicted, and the material part of it reads—"A member who has been interdicted shall receive from the date of interdiction one half of his emoluments unless the Commission orders that a greater portion of his emoluments than one half shall be paid." Although paragraph (iv) does not state who is liable to pay the prescribed portion of an interdicted officer's emoluments, one must look to section 23 (1) to determine that question. Where a member of the Local Government Service is appointed to a post in the service of a local authority the obligation to pay his salary and allowances is cast by section 23 (1) on that local authority. It is clear that such obligation continues as long as the appointment is in force. I do not think that the interdiction had the effect of terminating the petitioner's appointment. The argument of learned counsel for the 2nd respondent that the payment of the petitioner's emoluments while he is under interdiction is the liability of the Commission and not of the 2nd respondent does not appear to be tenable in view of section 14 (1) of the Ordinance which in effect provides that no part of any funds made available to the Commission by Parliament shall be utilised towards payment, *inter alia*, of salaries and allowances of members of the Local Government Service as distinct from the officers and servants of the Commission.

Mr. Koattegoda for the 1st respondent was prepared to concede that if paragraph (iv) of Regulation 51 applies to interdictions by the Local Government Service Commission the 2nd respondent would be liable to pay one half of the petitioner's emoluments while he is under interdiction. But he contended that since paragraph (iv) does not refer to interdictions

by the Commission, and coming as it does immediately after paragraphs (i) to (iii) which deal with interdictions by the Mayor of a Municipal Council or Chairman of an Urban Council or other local authority, the provisions of paragraph (iv) should be construed as applicable only to the cases in paragraph (i) to (iii). I am unable to agree with this contention. Regulation 51 occurs at the end of a group of regulations (Regulations 41-50) dealing with the procedure to be followed where disciplinary action is taken by the Commission or by a local authority against a member of the Service. Regulation 51 deals with interdiction, which is generally a step incidental to disciplinary action. In my opinion, Regulation 51 is applicable to all orders of interdiction which may lawfully be made under the Ordinance, subject to express words of limitation. Paragraph (iv), which is not expressly limited to interdictions under paragraphs (i) to (iii), is, therefore to be construed as applicable to interdictions by the Commission as well. In my opinion, paragraph (iv) of Regulation 51, read with section 23 (1), renders the 2nd respondent liable to pay out of its funds one half of the emoluments of the petitioner during his interdiction.

The only other question is whether mandamus lies to compel the respondents to make the payment. It was submitted for the respondents that whatever statutory duty, if any, owed by them to the petitioner is of a purely private character and, therefore, no mandamus lies to compel the performance of such a duty. The case of *Perera v. Municipal Council of Colombo*¹ relied on for this submission is clearly distinguishable from the present case. In my opinion the duties imposed on a local authority, which is a public body, under section 23 (1) of the Ordinance and Regulation 51 (iv) of the Local Government Service Regulations, 1947, are of a public character. Another objection taken for the respondents against the issue of the writ was that the petitioner could have filed a regular action for the recovery of the emoluments claimed by him. But the Court would not, in the exercise of its discretion, refuse a writ on the sole ground that another remedy is open to an applicant unless such remedy is shown to be equally effectual as well as convenient—*Local Government Service Commission v. Urban Council, Panadura*². I am not prepared to say that the remedy which was open to the petitioner by way of a regular action can be so regarded. Moreover, the present case appears to fall within the rule stated by Lord Esher, M.P., in *The Queen v. Commissioners for Special Purposes of the Income Tax*³ that where officials having a public duty to perform, refuse to perform it, mandamus will lie on the application of a person interested to compel them to do so. The rule would also apply where a public body fails to perform a public duty with which it is charged.

At the hearing of this matter I was informed by counsel that the interdiction of the petitioner was withdrawn by the Local Government Service Commission on the 4th April, 1961, and he was subsequently

¹ (1947) 48 N. L. R. 66.

² (1888) 21 Q. B. D. 313.

³ (1952) 55 N. L. R. 429.

transferred as the Secretary of the Village Committee, Puttalam Pattu, with effect from the 1st June, 1961. The order *nisi* issued on the respondents is made absolute with costs fixed at Rs. 210 payable by the 2nd respondent. The period in respect of which the petitioner is entitled to half his emoluments will be from the 30th April, 1960, to the 3rd April, 1961. This order will, of course, be without prejudice to any lawful claim which the petitioner may have to be paid the other half of his emoluments in respect of the same period.

I wish to place on record my thanks to Crown Counsel who appeared as *amicus curiae* for the assistance rendered by him in this case.

Order made absolute.

