1953 *Present :* **Pulle J.**

A. G. PERERA, Petitioner, *and* C. AMERASINGHE, Respondent

S. C. 125—Application for a Writ of Quo Warranto *on the Member for Ward No. 6, Urban Council, Kolonnawa*

Local Authorities Elections Ordinance, No. 53 of 1946—Section 10 (1) (d)—" Holder of a public office under the Crown "—Indigenous Medicine Ordinance, No. 17 of 1941, as amended by Ordinance No. 27 of 1945 and Act No. 49 of 1949, ss. 2, 6 (1).

The respondent was an ayurvedic physician who was appointed by the Board of Indigenous Medicine as a visiting specialist in boils and carbuncles for a certain period in an honorary capacity. No salary was attached to the office, but a monthly travelling allowance not exceeding Rs. 150 was paid depending on the number of visits. The respondent was, according to the letter of appointment, " expected " to visit the hospital of Indigenous Medicine three times a week and to deliver a course of lectures to the students on these visits.

Held, that the respondent was not a holder of a public office under the Crown in Ceylon within the meaning of section 10 (1) (*d*) of the Local Authorities Elections Ordinance. He was, therefore, not disqualified from being a member of a local authority.

APPLICATION for a writ of *quo warranto* on the Member for Ward No. 6, Urban Council, Kolonnawa.

D. S. Jayawickreme, with *Rienzie Wijeratne*, for the petitioner.

A. L. Jayasuriya, with *M. M. Kumarakulasingham* and *D. R. P. Gunatileke*, for the respondent.

Cur. adv. vult.

February 6, 1953. PULLE J.—

The respondent to this application was elected on the 30th November, 1950, as a member for Ward No. 6 of the Kolonnawa Urban Council. The petitioner challenges the election on the ground that on the material dates the respondent was the holder of a public office under the Crown in Ceylon and that, therefore, by virtue of section 10 (1) (*d*) of the Local Authorities Elections Ordinance, No. 53 of 1946, he was not qualified to be elected or to sit or vote as a member of the Urban Council.

By a notification in the *Government Gazette* of 26th September, 1952, the Council has been dissolved and in these circumstances the proper order I should make is to dismiss the application. The respondent however, asks that the petitioner be condemned in costs on the ground that the application disclosed no grounds for intervention and that it was bound in any event to fail. It is, therefore, necessary to examine the application on its merits.

The respondent is an ayurvedic physician who was appointed by the Board of Indigenous Medicine as a visiting specialist, in an honorary capacity, in boils and carbuncles for a period of one year commencing on 1st August, 1950, and the appointment was extended for a further period of one year commencing on 1st November, 1951. No salary was attached to the office but a monthly travelling allowance not exceeding Rs. 150 was paid depending on the number of visits. The respondent was according to the letter of appointment " expected " to visit the hospital of Indigenous Medicine three times a week and to deliver a course of lectures to the students on these visits.

The Board of Indigenous Medicine and the institutions administered by them are governed by the Indigenous Medicine Ordinance, No. 17 of 1941, as amended by Ordinance No. 27 of 1945 and Act No. 49 of 1949. By section 4 the members of the Board are constituted a corporation and one of their statutory duties is to provide courses of instruction in indigenous medicine to the students admitted to the College. Learned Counsel for the petitioner has relied on section 2 under which the College and the Hospital are maintained as Government institutions out of funds provided for the purpose by Parliament and also on section 6 (1) which as amended reads as follows :—

> " Every appointment of an officer or servant of any description to the staff of the College and of the Hospital and the Pharmacy, Herbarium and Dispensary attached thereto, shall be made in accordance with the provisions of the Public Service Regulations, subject to such modifications as may be made therein by regulations made under this Ordinance ; and for the purposes of the application of the Public Service Regulations in each such case, the powers and functions vested by them in the Head of a Department shall be deemed to be vested in the Board.
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> " All officers or servants in the service of the Board at any of the aforesaid institutions on the day immediately preceding the date on which this Ordinance comes into operation shall be deemed to be, and to have been from the date on which they were first appointed

by the Board, public servants for all purposes including the purposes of any scheme for the grant of pensions, retiring allowances or gratuities, or of benefits from any provident fund, to public servants upon the termination of their service under Government."

The expression " public office " as used in section 10 (1) (*d*) of the Local Authorities Elections Ordinance has not been defined, unlike in the Ceylon (Constitutional) Order in Council, 1946, and the Ceylon (Parliamentary Elections) Order in Council, 1946. If it be the position that a person appointed under section 6 (1) becomes a servant of the Crown that would not be decisive of the question whether he holds a " public office " under the Crown. In the case of *Lewis v. Cattle*[1] Lord Hewart C.J., said—

" There are many offices which are held under His Majesty the holders whereof are not in any proper sense of the words in the service of His Majesty. So also there are many persons in the service of His Majesty who do not in any proper sense of the word hold office under His Majesty."

The tests by which one determines whether a particular employment is the holding of a " public office " are discussed in the speeches in the case of *McMillan v. Guest*[2]. Lord Atkin said—

" There is no statutory definition of 'office'. Without adopting the sentence as a complete definition one may treat the following expression of Rowlatt J. in *Great Western Railway Company v. Bater*[3], adopted by Lord Atkinson, as a generally sufficient statement of the meaning of the word : ' an office or employment which was a subsisting, permanent, substantive position which had an existence independent of the person who filled it, which went on and was filled in succession by successive holders '."

In the same case Lord Wright said—

" The word ' office ' is of indefinite content. Its various meanings cover four columns of the New English Dictionary, but I take as the most relevant for purposes of this case the following : ' A position or place to which certain duties are attached, especially one of a more or less public character '," and later " I do not attempt what their Lordships did not attempt in *Baters case*[3], that is, an exact definition of these words. They are deliberately, I imagine, left vague. Though their true construction is a matter of law, they are to be applied in the facts of the particular case according to the ordinary use of language and the dictates of common sense with due regard to the requirement that there must be some degree of permanence and publicity in the office."

According to the evidence of Dr. J. M. L. Mendis who is the Secretary of the Board and the Superintendent of the Hospital the post in which the respondent functioned was not one for which provision was made

[1] *(1938) 2 All E. R. 368.*

[2] *(1942) A. C. 561.*

[3] *(1922) 2 A. C. 1.*

in the estimates and consequently no salary was paid to him. I take it that he was not bound by any of the regulations governing the salaried staff. The fact that the respondent did not always draw the maximum travelling allowance indicates that it was not regarded as a matter of obligation that he should pay three visits a week to the Hospital. In appointing the respondent as a lecturer on the terms set out the Board apparently did not purport to exercise and did not in fact exercise any powers and functions vested in them as the Head of a Department and, therefore, the respondent was not brought into any contractual relationship with the Crown. I am also satisfied that the respondent was not by reason of his appointment under an obligation to discharge duties of a public character.

I am unable on the material before me to hold that the respondent held a public office under the Crown. The application is refused with costs which I fix at Rs. 315.

Application refused.