

1952

Present : Swan J.

LOCAL GOVERNMENT SERVICE COMMISSION, Petitioner,
and URBAN COUNCIL, PANADURA *et al.*, Respondents

S. C. 487—Application for a Writ of Mandamus

Mandamus—Alternative remedy available—Circumstances when writ would nevertheless lie—Local Government Service Ordinance, No. 43 of 1945, s. 51 (a)—Pension payable thereunder—Remedy for collecting it from local authority.

Mandamus would lie where an alternative remedy by way of ordinary action would not be convenient or effective.

A writ of *Mandamus* is available to the Local Government Service Commission in order to compel a local authority to pay money due to it under section 51 (a) of the Local Government Service Ordinance in respect of a pension granted to a retired member of the Local Government Service. The obligation imposed on the local authority in such a case is in the nature of a public duty and can be enforced by way of *Mandamus* because an ordinary action would not be a convenient or effective remedy.

APPPLICATION for a writ of *Mandamus*.

H. V. Perera, Q.C., with *E. R. S. R. Coomaraswamy*, for the petitioner.

E. B. Wikramanayake, Q.C., with *Sam. P. C. Fernando*, for the 1st respondent.

Sam. P. C. Fernando, for the 2nd respondent.

Cur. adv. vult.

November 21, 1952. SWAN J.—

This is an application for a writ of *Mandamus* on the Urban Council, Panadura, and its Chairman to command them to pay to the petitioner all sums of money that have fallen due and all sums that will in the future fall due in respect of the pension granted to one B. P. Ranasinghe.

The petitioner's case is that under the provisions of the Local Government Service Ordinance, No. 43 of 1945, as amended by Ordinances Nos. 56 of 1946 and 37 of 1947 and Act No. 8 of 1949, all employees of Local Authorities including Urban Councils who hold scheduled posts are members of the Local Government Service and, as such, in the service of the petitioner; and that the power to grant pensions to such employees upon retirement is vested in the petitioner. Under section 51 of the main Ordinance as amended by section 19 of Act No. 8 of 1949 all pensions granted by the petitioner to retired members of the Service are payable by the Local Authority concerned to the petitioner out of its funds before the 10th day of each month. Under section 51 (a) the pension granted to a retired member is payable by the petitioner to such member. B. P. Ranasinghe

aforementioned who was Superintendent of Works of the Urban Council, Panadura, and who was a member of the Service of the petitioner retired under the provisions of section 46 of the Local Government Service Ordinance with effect from 15th March, 1950. On 14.12.1950 the petitioner duly approved the payment of a pension of Rs. 142·92 per mensem to the said B. P. Ranasinghe. The respondents were duly informed of this decision and requested to remit all sums due in respect of this pension so that the petitioner could carry out its statutory obligation under section 50 (1) of the Ordinance. For several months the respondents failed to comply with the petitioner's requests. On 14.7.1950 the respondents remitted to the petitioner only a sum of Rs. 3,029·74 out of a sum of Rs. 3,938·92 payable up to that date, and recommended that a reduced pension of Rs. 95·28 per mensem be granted to the aforementioned B. P. Ranasinghe. This recommendation was considered but rejected by the members of the Commission and on 30.7.1951 the petitioner returned the cheque for Rs. 3029/74 to the respondents informing them that the recommendation to reduce the pension was rejected and requesting them to remit the full amount of Rs. 3,938·92. The respondents, however, failed, and neglected to do so.

This application was made on 22.9.1951. On 25.9.1951 the 1st respondent remitted to the petitioner the full amount, namely, Rs. 3,938·92. That fact is referred to in the statement of objections of the 1st respondent filed on 7.11.1951 and complaint is made that the petitioner's Proctors demanded a large sum by way of costs which sum was described as exorbitant and unreasonable. In this state of things one would have expected an adjustment of the matter but the 1st respondent's Counsel at the inquiry did not concede the right of the petitioner to apply by way of *mandamus* for the performance of the 1st respondent's obligation. In fact, in the 1st respondent's objections it is stated that the petitioner's remedy is by action and that *mandamus* does not lie. The 2nd respondent filed an affidavit in support of the objections of the 1st respondent.

At the inquiry, Mr. Sam. P. C. Fernando appearing for the 2nd respondent submitted an affidavit to the effect that the 2nd respondent had resigned from the office of Chairman on 1st October, 1952. I suggested that he should be dismissed from the case without costs but as his Counsel insisted on an order for costs, the matter could not be settled even as far as the 2nd respondent was concerned.

The question I have to decide is whether the petitioner can ask for a writ of *mandamus*. Counsel for both respondents make common cause in resisting the application. They concede that the petitioner has the right to demand, and the 1st respondent the liability to pay the pension in question. It is, however, contended that *mandamus* does not lie for the following reasons :—

- (a) it will not be granted except to compel the performance of a public duty. The Ordinance only creates a liability on the part of the 1st respondent to pay the pension ; it does not impose on the 1st respondent an obligation in the nature of a public duty but only a civil liability.
- (b) there is an alternative remedy, namely, recovery by ordinary action.

As regards (a) I would hold that the obligation imposed on the 1st respondent is in the nature of a public duty. As regards (b) undoubtedly the petitioner can sue for the recovery of each month's pension as it falls due ; but that would not be a convenient or effective remedy. The inconvenience is self-evident. The ineffectiveness will be readily understood when one considers the steps that have to be taken in execution under a decree obtained in a civil action. Allen on *Law and Orders* at page 61 puts the matter thus :—

“ When any public authority or official is under an absolute (not a discretionary) duty to perform a certain function and refuses to do so, any person who has a demonstrable interest in its performance may move the High Court for a *mandamus* to compel the fulfilment of the duty, and the Court, if satisfied by the application, will make an order accordingly, provided that there is no other remedy *equally convenient, beneficial and effectual* open to the applicant. ”

The application of the petitioner against the 1st respondent is allowed with costs. A writ of *mandamus* will issue against the 1st respondent as prayed for in the petition. As the 2nd respondent is no longer the Chairman he is discharged from these proceedings, but I make no order in his favour as to costs.

Application allowed.

