

1948

Present : **Basnayake J.**

VAN REYK, Appellant, and SAHIBJAN, Respondent.

S. C. 48—C. R. Kandy, 2,554.

Public Servants Liabilities Ordinance—Clerk in Food Control Department—Temporary nature of employment—Is he public servant?—Test applicable.

A temporary clerk in the Food Control Department is a public servant within the meaning of the Public Servants Liabilities Ordinance.*

APPEAL from a judgment of the Commissioner of Requests, Kandy.

M. M. Kumarakulasingham, with *P. S. W. Abeywardene*, for the defendant, appellant.

Christie Seneviratne, for the plaintiff, respondent.

¹ (1823) *Turn. & R.* 138 at 140 ; 37 *E. R.* 1049 at 1050.

May 18, 1948. BASNAYAKE, J.—

This is an action by one C. Sahibjan for the recovery of money due from the defendant, one J. Van Reyk, on a promissory note dated June 21, 1946, given by him. The only question that arises for decision on this appeal is whether the defendant-appellant (hereinafter referred to as the appellant) is a public servant within the meaning of that expression in the Public Servants (Liabilities) Ordinance. The learned Commissioner has held that he is not.

The evidence is that the appellant joined the Food Control Department of the Government as a temporary clerk in January, 1944, and is still in service. Under the terms on which he has been engaged his employment can be determined by the Government on a month's notice. He is not entitled to a pension or gratuity but he contributes 5 per cent. of his salary to the provident fund established under the Public Service Provident Fund Ordinance, No. 18 of 1942. At the time he entered the service of Government the appellant was fifty-nine years of age, and he is now sixty-three. The appellant receives a salary of Rs. 88 per mensem, a rent allowance of 15 per cent. of his salary, and a cost of living allowance. He is entitled to leave and holiday warrants like any officer on the permanent establishment.

On these facts I have no doubt that the appellant is "employed in the service of the Government" within the meaning of these words in the definition of the expression "public servant" in the Ordinance. Learned counsel for the respondent submits that the definition includes only persons employed in Departments of Government of a permanent nature and excludes those engaged in such Departments as the Food Control Department which are not of a permanent nature. I find nothing in the Ordinance which warrants the limitation which learned counsel seeks to place on the words "employed in the service of the Government"; nor do the cases of *Palaniappa Chetty v. Fernando*¹, *Perera v. Perera*², and *Saibo v. Punchirala*³ support his proposition. In the last case *De Sampayo A.J.* observes: "The servant, in order to be entitled to the benefit of the Ordinance, must no doubt have a fixed appointment, but the appointment need not have a salary attached to it."

With the greatest respect I find myself unable to agree to the restriction of the scope of the definition of "public servant" by the imposition of such a rigid rule as is laid down in the last-mentioned case. The facts of each case must be looked at in order to determine whether a particular person falls within the definition. To my mind the test is not whether the department in which the person is engaged is a permanent feature of Government activity but whether the employee, having regard to the terms of his service, can be regarded as being in the service of the Government.

The appeal is allowed with costs in both courts and the judgment of the learned Commissioner is set aside.

Appeal allowed.

¹ 1 A. C. R. 27.

² (1910) 13 N. L. R. 257.

³ (1915) 18 N. L. R. 249.