

Local Government Service Commission V. Kandasamy

1/1965

Present: Sansoni, C. J., and Sirimane, J.

**THE LOCAL GOVERNMENT SERVICE COMMISSION, Appellant,
and V. KANDASAMY, Respondent**

S. C. 477/62—D. C. Jaffna, 1,847 /M

Local Government Service Commission—Scope of its power to dismiss a member of the Local Government Service employed in a Town Council—Arrears of salary and allowances—Liability of Town Council—Local Government Service Ordinance (Cap. 264), ss. 11(1) (c), U (1) , 23(1), 25, 27, 30(b)—Town Councils Ordinance (Cap. 256), s. 35 (k)—Interpretation Ordinance (Cap. 20), s. 14 (f)—Municipal Councils Ordinance (Cap. 252), s. 40 (1) (e).

In the absence of appropriate Regulations framed under section 27 of the Local Government Service Ordinance, sections 11 (1) (c) and 25 of that Ordinance do not empower the Local Government Service Commission to retire compulsorily a member of the Local Government Service.

In 1957, the defendant (Local Government Service Commission) appointed the plaintiff as Ayurvedic Physician to a Town Council. The Ayurvedic Dispensary, in which the plaintiff was employed, was by resolution of the Town Council dated 23rd April 1960 closed with immediate effect. At the request of the Council, the defendant Commission retired the plaintiff compulsorily from service on the ground of abolition of office. The plaintiff thereupon instituted action claiming a declaration that he was yet a member of the Local Government Service, and also claiming arrears of salary and allowances.

Held, (i) that the compulsory retirement of the plaintiff by the defendant Commission was wrongful and illegal. (ii) that the plaintiff could not claim his salary and allowances from the Commission, since these were not payable by the Commission but by the Town Council.

APPEAL from a judgment of the District Court, Jaffna.

H. W. Jayewardene, Q. C., with *W. D. Gunasekera* and *S. S. Basnayake*, for Defendant-Appellant.

C. Ranganathan, Q. C., with *E. B. Vannitamby*, for Plaintiff-Respondent.

Cur. adv. vult.

October 5, 1965. **SANSONI, C.J.**—

The plaintiff is an Ayurvedic Physician and the defendant is the Local Government Service Commission. In 1957, the defendant appointed the plaintiff Ayurvedic Physician, Grade III, to the Manipay Town Council. In 1958 he was confirmed in that post, and in 1959 he was promoted to Grade II by the defendant. In June 1960 the Commission wrote to the Chairman of the Town Council conveying its decision to compulsorily retire the plaintiff with effect from 9th September, 1960 and asking the Chairman to inform the plaintiff and to take the necessary action. When the plaintiff protested, he was informed by the Commission that his retirement was due to abolition of office.

The plaintiff has brought this action claiming a declaration that he is yet a member of the Local Government Service, and also claiming arrears of salary and allowances. The Commission by its answer pleaded that the free Ayurvedic Dispensary run by the Council, in which the plaintiff was employed, was by resolution of the Council dated 23rd April 1960 closed with immediate effect. As the Council requested the Commission to terminate the services of the plaintiff as Ayurvedic Physician by the end of June 1960, the Commission decided to retire the plaintiff compulsorily from service on abolition

of office. Consequently the plaintiff was compulsorily retired with effect from 9th September 1960. The Commission asked that the plaintiff's action be dismissed with costs.

The point in issue is a very short one, since it turns only on the question whether the Commission had the power to compulsorily retire the plaintiff. The relevant powers of the Commission with respect to members of the service—and the plaintiff was admittedly a member—are set out in section 11 of the Local Government Service Ordinance, Cap. 264. Section 11 (1) (c) provides that the Commission shall have the power "to recruit, appoint, promote, transfer, dismiss, interdict or otherwise punish members of the service and generally to maintain discipline in the service". Section 25 contains further provisions regarding dismissal and punishment of members of the service. It reads :— (1) No member of the service shall be dismissed or otherwise punished except in accordance with the provisions of this Ordinance or any regulations made thereunder. (2) No member of the service shall be dismissed unless an order of dismissal is made by at least three members of the commission.

Section 27 provides that Regulations may be made among other things for (a) retirement and (c) "dismissal, interdiction or punishment" of members of the service. We have not been referred to, nor is it claimed, that there are any Regulations framed under this Ordinance dealing with the compulsory retirement of members of the service.

As Canekeratne J. said in *Suriyauansa v. The Local Government Service Commission* [1 (1947) 48 N. L. R. 433 at 436] "The position of a member in the Local Government Service differs widely from that of a servant in the ordinary sense. Broadly speaking, the former contracts at his appointment that he will serve his employer in accordance with the statute and the regulations from time to time operative. These regulate in great detail the conditions and the terms of his service. Once upon the fixed establishment he retains his position until duly removed or superannuated. The power generally possessed by a master to dismiss a servant was

restricted by the provisions of section 23 (1) and (2) (now section 25 (1) and (2)) of Ordinance No. 43 of 1945, and the master had no power to dismiss him except upon the grounds which the rules prescribe." The learned Judge later said that the Ordinance cut down the absolute right which a master had to dismiss his servant, and gave the members of the service " a certain measure of fixity of tenure ".

Mr. Jayewardene referred us to Section 39 which occurs in Part III of the Ordinance dealing with the Provident Fund. Section 39 (6) states what is to happen if a contributor to a Fund leaves the service on abolition of office. Regulations have been made with regard to the pensions and gratuities payable on abolition of office. But they have no application until a member of the service leaves it upon a lawful abolition of his office.

There is no provision in the Town Councils Ordinance, Cap. 256, dealing with compulsory retirement or abolition of office. Section 35 of that Ordinance empowers a Town Council to appoint all necessary officers and servants and do various other things ; and sub-section (k) empowers such a Council " generally to do all things necessary for the effective exercise of the powers and duties of the Council". Mr. Jayewardene relied strongly on sub-section (k), but all it does is to empower a Town Council to do what is necessary effectively to exercise powers that have been granted. It does not confer a new power.

Mr. Jayewardene also referred us to the Interpretation Ordinance, Cap. 2, Section 14 (f) which provides that in all enactments " for the purpose of conferring power to dismiss, suspend, or re-instate any officer, it shall be deemed to have been and to be sufficient to confer power to appoint him ". He asked us to give the word " dismiss " a wide meaning which would include " compulsorily retire ". But section 14 (f) does not apply to this case. Section 11 (1) (c) of the Local Government Service Ordinance confers express power on the Commission to recruit, appoint, promote, transfer, dismiss, interdict or otherwise punish members of the service, and the word " dismiss " in this context must be limited to dismissal as a mode of

punishment. There is no need to resort to the Interpretation Ordinance which only deals with an implied power to dismiss.

Mr. Ranganathan cited section 40 (1) (e) of the Municipal Councils Ordinance, Cap. 252, which empowers a Municipal Council to abolish any post or office in the service of the Council, whether or not such post or office is a scheduled post within the meaning of the Local Government Service Ordinance. He relied on the absence of such a provision in the Town Councils Ordinance, and argued that even if the Manipay Town Council had abolished the office of Ayurvedic Physician—which is a matter of some doubt on the evidence—it had no power to do so.

In my view the learned District Judge was right in holding that the compulsory retirement of the plaintiff by the defendant Commission was wrongful and illegal. The plaintiff is therefore entitled to the declaration he asked for. But he should not have claimed his salary and allowances from the Commission, since these are not payable by the Commission but by the Town Council. Section 23 (1) requires every local authority to pay the salaries and allowances of each member of the service who is appointed by the Commission to any post in the service of that authority, and section 14 (1) requires the Commission to pay the salaries and allowances of the members and staff of the Commission only, and not members of the service.

The judgment under appeal is affirmed to the extent that it declares the plaintiff to be a member of the Local Government Service, but it is set aside in respect of the other relief granted to the plaintiff. The plaintiff is entitled to half his costs in the lower Court and in appeal.

SIRIMANE, J.—I agree.

Appeal partly allowed.