

1934

*Present : Garvin S.P.J. and Akbar J.*GOUL *v.* CONCECION.

265—D. C. Colombo, 51,740.

Public Servants' Liabilities Ordinance—Salary—Meaning of term—Does not include allowances—Ordinance No. 2 of 1899, s. 3 (2).

The term "salary" in section 3 (2) of the Public Servants' Liabilities Ordinance means the regular remuneration received by a person in respect of his fixed appointment in the public service and does not include allowances that may be granted to him.

A PPEAL from a judgment of the District Judge of Colombo.

Croos DaBrera, for the defendant, appellant.

Nadarajah (with him *Wikramanayake*) for the plaintiff, respondent.

July 12, 1934. GARVIN S.P.J.—

This was an action on a promissory note. The defendant is undoubtedly a public servant, and, quite apart from the other defences taken by him he has pleaded the benefit of the Public Servants' Liabilities Ordinance, No. 2 of 1899. The learned District Judge has, however, held that he

¹ 2 *Balasingham's Reports* 104.

was not entitled to these benefits upon the ground that the protection afforded by the Ordinance is limited to public servants in receipt of a salary of less than Rs. 3,000 a year. In this the learned District Judge is mistaken for section 3 (2) speaks of a salary of not more than Rs. 300 a month, not of a salary of not more than Rs. 3,000 a year. The salary of the defendant is said to be Rs. 3,500 a year which is less than Rs. 300 a month. It is urged, however, by counsel for the plaintiff that in addition to this he receives certain allowances and that these must be taken into consideration in the ascertainment of his salary.

Now in regard to these allowances, all that the evidence shows is that in consideration of the payment of a certain percentage of his salary the defendant is permitted to occupy a Government house and that where he is required to work "overtime" he receives a separate payment for the hours so spent. The contention is that these privileges must also be assessed and added to what would ordinarily be referred to as his salary. In regard to the first of these two matters, there is certainly no material here which would enable such an assessment to be made, if indeed it could be said that the privilege of occupying a Government house in consideration of the payment of a certain percentage of his salary is an allowance. As regards "overtime", there is again no evidence which would enable us to say what sum he earned in that way. Apart, however, from these considerations, it seems to me that the word "salary" within the meaning of section 3 (2) does not and was not intended to include any allowances which may from time to time or at any particular time have been granted to a public servant. The word "salary", having regard to the context, must I think be given the meaning which would be attached to that word in the public service and in matters relating to the Establishment. Indeed, the words "salary" and "allowance" are in a sense mutually exclusive, "allowance" being something which is additional to and distinct from "salary". If we approach this matter from the point of view of the contention that any "overtime" earned by a man should be treated as part of his salary within the meaning of section 3 (2), the distinction will, I think, become apparent. "Overtime" clearly implies hours of work outside those of his fixed appointment. Section 3 (2) makes it perfectly clear that the salary is that which a man receives in respect of his fixed appointment. It could hardly have been intended that some extra remuneration paid to a man in consideration of his doing extra work was to be regarded as part of the salary of his fixed appointment. Again, as a mere matter of interpretation of this section it would seem that the word "salary" connotes that sum of money which a man receives regularly every month in respect of his fixed appointment. To admit the contention that allowances and additions to a salary earned by "overtime" work are included in the term "salary" as used in this section would be to make it difficult, if indeed not impossible, to say of a public servant what his salary is at any particular time. For these reasons I think that the meaning of the words of section 3 (2) is, as suggested, the regular remuneration received by a man in respect of his fixed appointment in the public service under the head "salary" as distinct from "allowances".

In this view this appeal must succeed and the protection of the Public Servants' Liabilities Ordinance, No. 2 of 1899, granted to the defendant. The plaintiff's action must therefore be dismissed with costs both here and below.

ASBAR J.—I agree.

Appeal allowed.

