

1968 *Present* : Sansoni, C.J., and Siva Supramaniam, J.

LOCAL GOVERNMENT SERVICE COMMISSION, Appellant,
and S. NAGENDRAN, Respondent

S. C. 445/1964—D. C. Colombo, 60495/M.

Local Government Service Commission—Immunity from liability to pay the salary of a member of the Local Government Service—Scope—Local Government Service Ordinance, ss. 8, 9, 10, 14, 23, 40 (1) (e), 59.

A member of the Local Government Service is not entitled to sue the Local Government Service Commission for arrears of salary and emoluments, even if his post is abolished by the local authority where he is employed.

APPEAL from a judgment of the District Court, Colombo.

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

S. Nadesan, Q.C., with *S. Sharvananda* and *S. C. Crossette-Thambiah*, for the Plaintiff-Respondent.

Cur. adv. vult.

September 22, 1966. SANSONI, C.J.—

The plaintiff has sued the Local Government Service Commission to recover his salary and emoluments as a member of the Local Government Service for the period 1st October 1962 to 31st August 1963. He was employed prior to 1st April 1946 as Electrical Superintendent, Jaffna

Urban Council. On 1st April 1946 he became a member of that Service, in which capacity he was appointed to various posts, the last being that of Electrical Engineer, Jaffna Municipal Council. The post was abolished by the Council as from 30th September 1962. The plaintiff claims that the Commission is liable to pay his salary and emoluments from 1st October 1962.

The Commission pleaded, among other defences, that although the plaintiff was a member of the Service it is not liable in law to pay the plaintiff's salary. The plaintiff won in the lower Court and the Commission appealed. The main argument urged in support of the appeal is that the Commission is not liable to pay the salary of the plaintiff or any member of the Service, since that liability has to be discharged by local authorities where members of the Service are appointed to posts in the Service of those authorities.

Certain sections of the Local Government Service Ordinance, Cap. 264, are relevant to the matter in dispute.

Section 11 (1) (a) provides that the Commission shall have, among other powers, the power to appoint, employ, remunerate and control its officers and servants. The phrase "officers and servants" in this context refers only to the Secretary, the Accountant and such other officers and servants as the Commission may deem necessary for the purpose of carrying out the provisions of the Ordinance, and who constitute the staff of the Commission—see ss. 8, 9 and 10. It is significant that no power is given by s. 11 to pay the salaries of members of the Service. Section 14 provides that the expenses of the Commission, including the salaries, allowances, pensions and gratuities payable to the members or the staff of the Commission, but not including the salaries, allowances, pensions and gratuities payable to members of the Service, shall be paid out of moneys provided for the purpose by Parliament under the annual Appropriation Act. Here again the omission to make the salaries and allowances of members of the Service payable by the Commission is worthy of note. Section 23 requires every local authority to permit each member of the Service who is appointed by the Commission to any post in the service of that authority to perform the duties of that post, and to pay out of its funds the salary and allowances of each such member. Section 59 states that the pension, gratuity or retiring allowance granted to a retired member of the Service, including the death gratuity granted under s. 58 (2) in respect of a deceased member of the Service, shall be paid by the Commission.

All these provisions seem to me to indicate quite clearly that the Commission is neither required, nor has the power, to pay the salaries of the members of the Service, and that they are payable only by the local authorities. I took that view in an earlier case and I am still of the same view—see *The Local Government Service Commission v. Kandasamy*¹. I would also refer to *Pathirana v. Gunasekera*².

¹ (1965) 68 N. L. R. 1.

² (1962) 66 N. L. R. 464.

The Ordinance does not envisage a member of the Service not being appointed to a post in the service of a local authority : and once a member is so appointed, the obligation to pay his salary devolves under s. 23 solely on that authority.

Mr. Nadesan relied on s. 40 (1) (e) of the Municipal Councils Ordinance, Cap. 252, which gives a Municipal Council the power 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 strongly on this provision to argue that once the post of Electrical Engineer was abolished by the Municipal Council of Jaffna, the Council ceased to be liable to pay the plaintiff's salary and the Commission then became liable to pay. I do not accept the argument that because the post was abolished the Council ceased to be liable to pay the salary and allowances of the plaintiff, even though he continued to be a member of the Service. Section 23 defines the liability of the local authority as a liability to pay the salary and allowances of each member of the Service appointed to a post in the Service of that authority. That liability will continue until the member is transferred to a post in some other local authority. The truth of the matter, I think, is that a situation such as that which arose in this instance was not contemplated by those who drew up the Municipal Councils Ordinance and the Local Government Service Ordinance. I doubt if they thought that the Commission and local authorities would ever be at cross purposes. And certainly the abolition of a post was never intended to be used as a means of getting rid of a member of the Service or avoiding the obligation to pay him his salary. So long as he is appointed to a post, he is entitled to his salary payable by the local authority, because it is payable by nobody else, there being no statutory duty or power vested in the Commission (which is a statutory body) to pay the salaries of members of the Service.

It is not open to us to fill the gaps, which is what the plaintiff wants us to do. We cannot add words to s. 14 providing for a special supplementary vote to be obtained from Parliament, which is what Mr. Nadesan suggested. Parliament, when it enacted the Ordinance, did not think it proper to introduce such a provision.

In this view of the matter it is not necessary to go into the question whether the Commission has terminated the employment of the plaintiff or not. I would allow the appeal and dismiss the plaintiff's action with costs in both Courts.

SIVA SUPRAMANIAM, J.—I agree.

Appeal allowed.