

1948

Present : Basnayake J.

DISANAYAKA, Appellant, and YATAWARA, Respondent.

*S. C. 116—C. R. Kandy, 2,477.**Public Servants (Liabilities) Ordinance—Clerk employed by Sanitary Board—Is he entitled to benefits of Ordinance?—Section 4.*

A clerk employed by a Sanitary Board and paid out of its funds is not a public servant within the meaning of the Public Servants (Liabilities) Ordinance.

¹ (1947) 1 *AL E. R.* p. 116.² (1924) *A. D.* p. 60 at p. 68.³ (1924) *A. D.* p. 261 at p. 263.

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

H. W. Jayawardene, for plaintiff, appellant.

S. R. Wijayatilake, for defendant, respondent.

Cur. adv. vult.

March 17, 1948. BASNAYAKE J.—

The appellant instituted this action to recover a sum of Rs. 171.75 due to him from the respondent on a promissory note dated March 31, 1941. The latter pleaded that he was employed as a clerk in the Kadugannawa Urban Council and claimed the benefit of the Public Servants (Liabilities) Ordinance.

The respondent first obtained employment as a temporary clerk in 1933, in the Tea Control Department of the Kandy Kaohcheri. In 1937 he was made a permanent clerk in the Sanitary Board Department of the Kandy Kaohcheri. He was paid by the Sanitary Board out of the funds of the Sanitary Board. In January, 1945, he was appointed a clerk in the Urban Council of Kadugannawa. He also stated that when in Government service he was not a member of the Government Clerical Service.

On this evidence the learned Commissioner of Requests held that he was entitled to the benefits of the Public Servants (Liabilities) Ordinance. This appeal is from that decision.

Counsel for the appellant submits that a clerk employed by the Sanitary Board and paid out of its funds is not a public servant for the purposes of the Public Servants (Liabilities) Ordinance and is therefore not entitled to its benefits. In that Ordinance (Section 4) the expression public servant means a person employed in the service of the Government of the Island, or of any Municipal Council or District Council, or Local Board, or of any provincial or District Committee established under the Thoroughfares Ordinance. It should be observed that a person employed in a Sanitary Board does not come within its ambit. Neither the Small Towns Sanitary Ordinance nor the Public Servants (Liabilities) Ordinance contains any indication as to the reason for the exclusion of the officers and servants of a Sanitary Board from the benefits of the latter Ordinance. A Sanitary Board is a local authority like any other with full power to manage its own affairs, to levy rates, to establish and maintain public services, to provide public amenities, to employ and pay its officers and servants, and to make all necessary disbursements out of its fund. Be that as it may a person employed in the service of a Sanitary Board cannot claim the benefits of the Public Servants (Liabilities) Ordinance unless he can at the same time bring himself within any of the classes of employees enumerated in the definition of Public Servant in that Ordinance. The respondent clearly was not a public servant in 1941, the year in which he contracted the liability that the appellant seeks to enforce.

I allow the appeal with costs and send the case back for the determination of the appellant's claim.

Appeal allowed.