

1966 . Present : Sri Skanda Rajah, J., and Siva Supramaniam, J.

L. ARIYASINGHE, Appellant, and THE ATTORNEY-GENERAL,
Respondent

S. C. 100/65—D. C. Colombo, 1093/Z

Public servant—Participation in politics—Manual of Procedure—Interpretation of Regulations 264 and 265—Member of a Village Committee—Appointment as teacher in a Government School—Validity—Local Authorities Elections Ordinance (Cap. 262), s. 9 (1) (d).

Where a person who is already a member of a Local Government body is appointed as a teacher in a school which is within the operation of the Assisted Schools Act No. 5 of 1960, an order given by the Director of Education calling upon him to resign from the membership of the Local Government body is not a lawful order which can be justified by the provisions of Regulations 264 and 265 of the Manual of Procedure. Nor can the bar imposed on him by section 9 (1) (d) of the Local Authorities Elections Ordinance from sitting or voting as a member of the Local Government body while he holds a public office disqualify him from continuing in office as a teacher.

APPEAL from a judgment of the District Court, Colombo.

Colvin R. de Silva, with *Gemunu Seneviratne*, for the plaintiff-appellant.

Mervyn Fernando, Crown Counsel, for the defendant-respondent.

Cur. adv. vult.

November 21, 1966. SIVA SUPRAMANIAM, J.—

The plaintiff was the Headmaster of the Nallure Ananda School when the school came within the operation of the Assisted Schools Act 5 of 1960 and the management was taken over by the Director of Education. He was also serving at that time as an elected member of the Kanogama Village Committee. In reply to a letter dated 23.12.61 from the Director of Education, the plaintiff, by document D1A of 17.1.1962, expressed his willingness to join the Government School Service instead of retiring on pension and he continued to hold the same post. On 2.3.1962, by letter D2A, the Director informed the plaintiff that if he was willing to serve under Government, he should immediately resign from the membership of the Local Body and that if he was not willing to give up that membership he could opt to retire under the amended School Teachers' Pension Regulations. He was requested to communicate his decision immediately to the Education Office. Although the plaintiff did not communicate his decision as required, he was informed by letter D3A dated 7.7.1962 that he was appointed provisionally as Headmaster with effect from 1.1.1962 and that the formal letter of appointment would be issued after verification of the particulars relevant to his appointment. On 19.9.1962, however, he was informed by letter D11A that his temporary letter of appointment D3A was cancelled as he was continuing to be a member of the Kanogama Village Committee and that his services were terminated with effect from 1.11.1962.

The plaintiff then instituted this action against the Attorney-General as representing the Crown for a declaration that he "is (or should be deemed to be) still in the Public Service as a teacher and that he is entitled to his salary from 1.11.1962 together with pension and other rights" on the ground that the termination of his services was "ultra vires, unjustified, wrongful and unlawful". The Attorney-General filed answer denying the plaintiff's right to maintain this action.

The trial took place on the following, among other, issues :—

- (3) Was the discontinuance of the plaintiff ultra vires, unjustified, wrongful and unlawful ?
- (5) Is it competent for the plaintiff to canvass in this Court the order dismissing him as a teacher ?
- (6) Does the plaint disclose a cause of action ?
- (7) Can the plaintiff have and maintain this action as he held office as a public servant at the pleasure of the Crown and can be dismissed at the pleasure of the Crown ?

Issues (1) and (2) did not relate to any matter that was in dispute between the parties and issue (4) arose only on issue (3) being answered in favour

of the plaintiff. Crown Counsel suggested another issue in the following terms :—

- (8) In any event, can the Court exercise a discretion and grant a declaratory decree as prayed for in paragraph 8 of the plaint in the circumstances of this case ?

This issue was objected to by Counsel for the plaintiff on the ground that it did not arise on the pleadings. Instead of accepting or rejecting the issue, the learned trial Judge made order as follows :—

“ I will decide with regard to issue (8) at the stage when that issue is reached. ”

It is not clear what the learned Judge meant by that order. Under s. 146 (2) of the Civil Procedure Code when the parties are not agreed in regard to the issues the duty is cast on the Court to ascertain upon what material propositions of fact or law the parties are at variance and to record the issues on which the right decision of the case appears to the Court to depend. An order should therefore have been made in regard to issue (8) before the evidence was recorded.

At the conclusion of the trial, the learned Judge answered issue (3) against the plaintiff and dismissed the plaintiff's action. He held that issue (4) did not arise and that it was unnecessary to answer issues (5), (6) and (7) (in view of his answer to issue (3)). The learned Judge reached the conclusion that the services of the plaintiff had been properly terminated by the Director of Education on the ground that the plaintiff, by failing to resign from his membership of the Village Committee, had committed a breach of Regulations 261 and 264 of the Manual of Procedure. Regulation 264 (omitting the parts that are not relevant to this case) is as follows :—

“ Officers are prohibited on pain of dismissal from taking any steps to secure their election or nomination, as the case may be, as members . . . of any Local Government body except in cases where they are eligible to stand for election and have obtained authority to do so ”

Regulation 261 has no application at all and is perhaps an error for Regulation 265 which reads as follows :—

“ All salaried officers are prohibited from taking any part in Local Government elections except the recording of their votes. This prohibition includes addressing meetings, canvassing in support of candidates, lending cars for the conveyance of voters and any similar activities. ”

In the course of his judgment the learned judge stated :—

“ Although Regulation 264 does not directly prohibit a public officer from holding office as a member of a local body, yet there is not in my view the slightest doubt that the Regulations do by implication achieve this end. ”

Regulation 264 prohibits a public officer from "taking any steps to secure his election." In the instant case, since the plaintiff was already a member of the Local Body at the time of his appointment he neither took "any steps to secure his election" nor did he "take part in an election". Section 3 of the same chapter of the Manual of Procedure which deals with membership of Associations expressly sets out what are prohibited and what are permitted. One will not be justified in reading into Regulations 264 and 265 an implied prohibition of something that is not expressly prohibited.

Learned Crown Counsel conceded before us that an implied prohibition cannot be read into Regulation 264 and that the Administrative Regulations nowhere prohibit an officer from being a member of a Local Body. He submitted, however, that the order of the learned trial Judge can be supported on another ground, namely, that the plaintiff committed a breach of a Departmental Order when he failed to resign when called upon to do so by the Director of Education. He referred to document D4A in which the plaintiff agreed to abide, *inter alia*, by "Departmental Orders or Regulations and any other orders or regulations issued from time to time by Government" and to the fact that the provisional letter of appointment D(3)A set out in paragraph 5 "you will be subject to Departmental Orders and any other regulations or orders issued from time to time by the Government."

The question, then, is whether the orders given by some officer on behalf of the Director of Education by letters D(2)A of 2.3.1962 and D(7)A of 6.8.1962 requesting the plaintiff to resign from the membership of the Village Committee were Departmental Orders a breach of which entitled the Director of Education to terminate the plaintiff's services. In our view every order that is issued by the Head of a Department does not necessarily become a "Departmental Order". The order should be one that is lawfully issued. D(7)A stated:—"Since you are a Government servant you cannot be allowed to participate in politics. You should resign from the Village Committee membership" The regulations contained in the Manual of Procedure prescribe the conduct of Government servants on matters which may be described as "Participation in Politics." The orders contained in D(2)A and D(7)A appear to have been given on a misapprehension of the effect of the relevant regulations contained in the Manual of Procedure. We are of opinion that so long as the plaintiff's membership of the Local Body did not offend any regulation contained in the Manual of Procedure, the order given on behalf of the Director of Education calling upon the plaintiff to resign from the membership of the Village Committee was not a lawful order. We were not referred to any other regulation or order issued by the Government which covered the instant case. The failure on the plaintiff's part to carry out the direction given by an officer of the Education Department to resign from the membership of the Village Committee was not, therefore, a breach of a Departmental Order which enabled the Director of Education to terminate the services of the plaintiff.

It was also submitted by learned Crown Counsel that under S. 9 (1) (d) of the Local Authorities Elections Ordinance (Cap. 262), a person who holds a public office cannot sit or vote as a member of any local authority and consequently the two offices of teacher and member of the Village Committee became mutually incompatible and the order given on behalf of the Director of Education to the plaintiff requesting him to resign from the membership of the Village Committee was a reasonable order. The question for consideration is not whether the plaintiff was disqualified from sitting or voting as a member of the Village Committee but whether he was disqualified from continuing in office as a teacher. The disqualification imposed by S. 9 (1) (d) of Cap. 262 on the membership of the Village Committee is not relevant to the question which arises for consideration in this case.

In our view issue (3) should have been answered in favour of the plaintiff and the appeal should be allowed.

Since the learned trial Judge did not adjudicate on the remaining issues in view of his answer to issue (3) we set aside the Judgment and decree and remit the case to the District Court in order that there may be an adjudication on issues (4)–(7). The learned Judge will also make his order in regard to issue (8) and if that issue is accepted adjudicate on it as well.

The appellant will be entitled to his costs in appeal. The costs in the lower Court will be in the discretion of the trial Judge.

SRI SKANDA RAJAH, J.—I agree.

Appeal allowed.
