

1943

Moseley A.C.J. and Jayetileke J.

MOHAMED, Appellant, and WALKER &amp; GREIG, Respondent.

120—D. C. Colombo, 10,586.

*Public servant—Kathi appointed under the Muslim Marriage and Divorce Registration Ordinance—Salary exempt from seizure—Civil Procedure Code, s. 218 (h).*

A Kathi appointed under the Muslim Marriage and Divorce Registration Ordinance is a public servant within the meaning of section 218 (h) of the Civil Procedure Code and his salary is exempt from seizure.

**A** PPEAL from an order of the District Judge of Colombo.

*P. Navaratnarajah*, for the defendant, appellant.

*A. H. C. de Silva* (with him *S. J. Kadirgamar*), for the plaintiff respondent.

*Cur. adv. vult.*

March 17, 1943. MOSELEY A.C.J.—

The respondent having a decree against the appellant obtained a prohibitory notice under section 229 of the Civil Procedure Code in respect of fees due to the appellant by virtue of his appointment as a Kathi under the Muslim Marriage and Divorce Registration Ordinance (Chapter 99). The appellant applied to the District Court for recall of the notice on the ground that the said fees were exempt from seizure under section 218 (h) of the Civil Procedure Code. The learned District Judge held the appellant is a public servant but that the fees receivable by him do not come within the meaning of the word "salary" in the section, and are therefore not exempt from seizure.

The two points for decision are—

- (1) Is the appellant a public servant; and if so,
- (2) Are his emoluments as such, "salary" within the meaning of the aforesaid section?

Section 5 of the Civil Procedure Code defines "public officer" as including "all officers or servants employed in this Colony by or under the Imperial Government or the Government of Ceylon." Is the appellant employed by the Government of Ceylon? Under section 4 (1) of Chapter 99 his

appointment as Kathi is made by the Governor; his appointment is gazetted; the Ordinance prescribes his duties and it is provided by regulation 43 of the regulations made under the Ordinance that he shall be paid fees at a certain rate. Added to this it appears to be accepted that he has an office, a clerk and fixed hours of work. All these elements seem to me to point irresistibly to the fact that he is a public servant. I arrive at this conclusion without having regard to the case of *Bansi Lal and others v. Mohamed Hafiz*<sup>1</sup>. There it was held that an advocate who was engaged to conduct a case on behalf of Government was a public officer on the ground that he was remunerated by fees for the performance of a public duty and therefore came within the definition of "public Officer" contained in section 2 of the Indian Civil Procedure Code. Since that definition differs from its counterpart in the Ceylon Code the case, in this respect, is not helpful. It is however, in my opinion unnecessary to look for authority outside the local definition which I have set out above, and which appears sufficiently comprehensive to embrace such an appointment. Counsel for the respondent contended that, inasmuch as the work done by the appellant was not of a continuous nature, he could not be regarded as a public servant. It may well be that in some districts a Kathi's work is of a desultory nature; in others it may be continuous. To draw a distinction between one Kathi and another would only be to complicate the matter further. In my view therefore, the learned District Judge was right in holding that appellant is a public officer.

The remaining question is whether the fees received by him are "salary" within the meaning of section 218 (h). The learned District Judge, in answering the question in the negative, relied upon a judgment of Garvin S.P.J., in *Goul v. Concecion*<sup>2</sup> in which the learned Judge used these words:—

"As a mere matter of interpretation of this section it would seem that this word "salary" connotes that sum of money which a man receives regularly every month in respect of his fixed appointment."

The learned District Judge held himself bound to follow that authority. The case, however, was one in which the maker of a promissory note pleaded the benefit of the Public Servants' Liabilities Ordinance (Chapter 88), section 2 (2) of which takes out of the scope of the Ordinance a public officer who is in receipt of a salary in regard to his fixed appointment of more than three hundred rupees a month. The defendant in that case was in receipt of a salary of Rs. 3,500 a year, but the plaintiff alleged that he received in addition certain allowances which brought his salary above Rs. 300 a month. It does not seem to me very difficult to follow the reasoning of Garvin S.P.J. which led him to hold that for the purpose of interpretation of section 2 (2) the word "salary" meant the sum of money which the man received regularly every month. The case to me is clearly distinguishable from the present one in which the only remuneration received by the appellant was the amount of fees received in respect of certain of his duties. In the course of his judgment in the Patna case to which reference has been made above, Mohamed Noor J. after considering

<sup>1</sup> (1939) A. I. R. Patna 77.

<sup>2</sup> 36 N. L. R. 73.

the definition of "salary" in Stroud's Judicial Dictionary, found nothing which restricted the word to an emolument which is paid monthly. It may be that in the present case there may be months in which the appellant receives no fees. In my view, nevertheless, for the months in which he is more fortunate the fees which he receives are the salary of his post. He is therefore entitled to the benefit of section 218 (h) of the Civil Procedure Code.

I would allow the appeal with costs here and in the District Court. The order of the District Court is set aside and the Fiscal is directed to recall the prohibitory notice in respect of the fees payable to the appellant.

JAYETILEKE J.—I agree.

*Appeal allowed.*

