

34, 196,

No. 38 of 1968

IN THE PRIVY COUNCIL

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

B E T W E E N :-

CHELLIAH KODEESWARAN

Appellant

- and -

THE ATTORNEY-GENERAL OF CEYLON

Respondent

C A S E FOR THE APPELLANT

B 1. This is an Appeal against a Judgment and  
Decree of the Supreme Court of Ceylon dated  
the 30th day of August 1967 setting aside a  
Judgment and Decree of the District Court of  
C Colombo dated the 24th day of April 1964  
C whereby the said District Court adjudged and  
decreed that, in accordance with the terms of  
the Appellant's employment under the  
Government of Ceylon, the Appellant was  
entitled to the payment of an increment of  
D Rs. 10/- per month with effect from the 1st  
April 1962.

pp.209-233

pp.174 -  
200

E 2. The Appellant, an officer in Grade II of  
the Executive Clerical Class in the General  
Clerical Service of Ceylon, was not paid an  
increment of salary of Rs. 10/- per month  
which fell due to him on the 1st April 1962,  
on the ground that he had not passed any of  
the proficiency tests prescribed at paragraph  
2 (a) and (b) of Treasury Circular No.560 of  
F the 4th December 1961. This Circular, which  
was sent to all permanent secretaries and  
heads of departments, was expressed to be in  
"implementation of the Official Language Act

p. 357

from January 1, 1961" and prescribed proficiency tests in Sinhala (prescribed by that Act as the Official Language of Ceylon) for "old entrants to the Public Service", of whom the Appellant was one. The Appellant is a member of the Tamil community speaking Tamil, and did not enter for any test in Sinhala. A

3. The principal issues that arise in this Appeal are - B

(a) Whether the Official Language Act (no.33 of 1956) is void as being in contravention of Section 29 (2) of the Constitution of Ceylon, which subsection prohibits legislative discrimination against communities. C

(b) Whether Treasury Circular No. 560 of the 4th December 1961 is illegal or invalid as having been issued in implementation or under the compulsion of that Act. D

(c) Whether the Appellant's increment was stopped pursuant to and in accordance with the provisions of Treasury Circular No. 560 of the 4th December 1961. E

(d) Whether the terms and conditions of the Appellant's employment under the Government of Ceylon were or could be effectively or validly altered by Treasury Circular No. 560 of the 4th December 1961. F

(e) Whether the Appellant was employed under a contract of service with the Government of Ceylon. G

(f) Whether, whatever the terms and conditions of his employment, the Appellant as a public servant had any right to sue the Government of Ceylon

for salary or increment thereto.

4. The following statutory provisions are relevant to this Appeal.

A Ceylon (Constitution) Order in Council  
(Cap.379)

Section 29

B (1) Subject to the provisions of this Order, Parliament shall have power to make laws for the peace, order and good government of the Island.

(2) No such law shall -

. . .

C (b) make persons of any community or religion liable to disabilities or restrictions to which persons of other communities or religions are not made liable; or

D (c) confer on persons of any community or religion any privilege or advantage which is not conferred on persons of other communities or religions, . . .

E (5) Any law made in contravention of sub-section (2) of this section shall, to the extent of such contravention be void.

Official Language Act, No.33 of 1956

F An Act To Prescribe The Sinhala Language As The One Official Language of Ceylon And To Enable Certain Transitory Provisions To Be Made

Section 2

The Sinhala language shall be the one

official language of Ceylon:

Provided that where the Minister considers it impracticable to commence the use of only the Sinhala language for any official purpose immediately on the coming into force of this Act, the language or languages hitherto used for that purpose may be continued to be used until the necessary change is effected as early as possible before the expiry of the thirty-first day of December, 1960, and, if such change cannot be effected by administrative order, regulations may be made under this Act to effect such change.

Section 3.

- (1) The Minister may make regulations in respect of all matters for which regulations are authorised by this Act to be made and generally for the purpose of giving effect to the principles and provisions of this Act.
- (2) No regulation made under sub-section (1) shall have effect until it is approved by the Senate and the House of Representatives and notification of such approval is published in the Gazette.

p.11

5. The Appellant commenced THE PRESENT PROCEEDINGS in the District Court of Colombo by Plaintiff dated the 10th October 1962, suing the Respondent as representing the Crown.

He pleaded -

- (a) that he was appointed to a clerkship in the General Clerical Class of the General Clerical Service of Ceylon on the 1st November 1952 and at all material times had been holding permanent employment under the Government of Ceylon.

- A (b) that on the 1st October 1959 he was promoted to be a Clerk in the Executive Clerical Class Grade II of the General Clerical Service of Ceylon and placed on the salary scale of Rs. 1620 - Rs. 120 - Rs. 3780 per annum.
- B (c) that in accordance with the terms of his employment under the said Government he had earned and was entitled to the payment of an increment of Rs. 10/- per month with effect from the 1st April 1962.
- C (d) that the Government Agent, Kegalle, acting by and on behalf of the Government of Ceylon, by letter dated the 28th April 1962, informed him that the said annual increment which fell due on the 1st April 1962 had been suspended as he had not passed any of the proficiency tests prescribed in paragraph 2 (a) and (b) of Treasury Circular No. 560 of 4th December 1961, and did not pay the said increment to him.
- E (e) that the said Treasury Circular was invalid and not binding on him as the requirements contained therein were
- F (i) unreasonable;
- G (ii) illegal, in that they were made in the implementation of the Official Language Act No.33 of 1956, the provisions of which were null and void in as much as in contravention of Article 29 of the Ceylon Constitution Order in Council they imposed on the members of the Tamil Speaking Community disabilities which the members of the
- H

Sinhala Speaking Community were not made liable to and/or conferred on the latter an advantage which was not conferred on the former.

P.13

6. In his Pleint the Appellant prayed A

(a) for a declaration

(i) that the Treasury Circular No.560 of 4th December, 1961 was unreasonable and/or illegal and therefore invalid and not binding on the Appellant; B

(ii) that in determining whether the Appellant should be granted his annual increments the said Circular should be disregarded; C

(iii) that the Appellant was entitled to the payment of the increment of Rs. 10/- per month as from 1.4.62.

p.14

7. In his Answer dated the 25th day of January 1963 the Respondent denied that in accordance with the terms of employment of the Appellant under the Government the Appellant was entitled as of right to the payment of Rs. 10/- per month or any other sum whatsoever by way of increment with effect from the 1st April 1962 and further pleaded D

(a) that the said Treasury Circular letter No.560 of the 4th December 1961 was not invalid and was binding on the Appellant; F

(b) that the said Circular Letter was not issued by the Acting Secretary to the Treasury under any power, authority, duty or function vested in or imposed upon him by or under the Official Language Act No.33 of 1956; G

(c) that in any event the provisions of the said Official Language Act, No.33 of 1956, were not null and void.

A 8. Issues were framed on the 25th day of September 1963 and the 3rd day of December 1963, upon which the action was tried. pp.15,97

B 9. At the hearing the Appellant gave evidence in support of his case. He testified that he had joined the Clerical Service on the 1st November 1952, and produced the letter of appointment then issued to him (P.16) and the agreement which he had entered into with the Government of Ceylon (P.17). pp.18-39  
p.250  
p.253

C The letter of appointment contained the following provision -

D 6. You will be subject to the Public Service Commission Rules, the Financial Regulations, the Regulations of the Manual of Procedure, Department Orders, and any other Orders or Regulations which may be issued from time to time by the Government. p.250,  
l.32

E On the 13th July 1960 he was promoted to Class II of the Clerical Service with effect from the 1st October 1959. His letter of appointment to this Class stated - p.329

F 2. Your appointment will be governed by the terms of the Minute on the General Clerical Service published in the Ceylon Government Gazette Extraordinary No. 10,844 of October 1, 1955, subject to any amendments that G may be made to it from time to time.

Before he sat for the examination which earned him this promotion, he referred to the Ceylon Government Gazette setting out the Clerical Service Minute (produced by another p.271

witness as P.1) which was dated the 1st October 1955. According to that Minute he was called upon to pass an examination in Tamil for the efficiency bar. He had not yet reached the efficiency bar. On the 31st March 1962 his salary was Rs. 145/- per month. An increment of Rs. 10/- was due on the 1st April 1962. A

10. The Clerical Service Minute (P.1.) provided inter alia as follows :- B

pp.271-2

2. The present conditions of service and salary scales are indicated below. Officers in the Service will also be subject to the Public Service Commission Rules, the Financial Regulations, the Regulations of the Manual of Procedure, Departmental Orders and any other orders or regulations of Government. The code is shown in the Annual Estimates under the various Heads and Votes of Expenditure. The salary scales, conditions of service, and code of the service are liable to alteration from time to time. C D E

3. Structure and Salary Scales

(i) Salary Scales.

Executive Clerical Class

Special Grade	Rs. <u>5,580 - 6,540</u> 4 of 240	F
Grade 1	Rs. <u>3,900 - 5,340</u> 8 of 180	
Grade 11	Rs. <u>1,620 - 3,780</u> 18 of 120 (E.B. with examination before Rs.3,180)	G



5. Grade 11 of the Executive Clerical Class :-

pp.273-274

- A (i) Appointments to Grade 11 of the Executive Clerical Class will be made on the results of a competitive examination . . . . .  
The regulations and syllabus for the examination appear as Appendix B for the Minute . . .

B 7. Increments and Efficiency Bars :-

p.274

C Increments on the salary scale applicable will be given annually, subject to satisfactory work and conduct. They will be given on the same condition during the probationary period in the General Clerical Class

D The regulations in the Manual of Procedure regarding increments and Efficiency Bars will apply to the General Clerical Service.

E Officers in Grade 11 of the Executive Clerical Class on the salary scale of Rs. 1,620 - 120 - Rs. 3,780 must pass the examination in national languages and accounts prescribed in Appendix C before they can proceed beyond the Efficiency Bar before Rs. 3,180 per annum . . .

F 8. Confidential Reports and Promotions:-

p.275

- G (i) Heads of Departments should submit annual confidential reports to the Permanent Secretary to the Ministry on all officers of the General Clerical Service in their departments who are not on probation . . .

(ii) Any adverse report made in the

confidential report, history sheet  
or personal file of an officer  
must be communicated to the  
officer . . .

. . . . .  
. . . . .

A

p.279

Appendix B

Competitive Examination for  
Promotion to Grade 11 of the  
Executive Clerical (Vide paragraph  
5 (1))

B

. . . . .

(ii) The subjects of the examination are  
as follows :-

(3) Sinhalese or Tamil (one and a  
half hours paper)

C

. . . . .

Note - The above provisions are  
liable to alteration. The Gazette  
notifications published from time  
to time by the Deputy Secretary to  
the Treasury should be consulted by  
prospective candidates for full up  
to date information regarding the  
examination.

D

E

pp.280-281

Appendix C

Examination in National Languages  
and Accounts for officers in Grade  
11 of the Executive Clerical Class  
(Vide paragraph 7).

F

(i) The subjects of the examination  
will be (a) the two national  
languages, Sinhalese and Tamil, and  
(b) the system of accounts employed  
in Government Offices . . .

G

. . . . .

(iii) Clerks of Sinhalese, Tamil and Moor parentage will be required to pass in one language and accounts,

: : : : :  
: : : : :

A

Note: The above provisions are liable to alteration from time to time.

p.283,1.13

11. The evidence of the Appellant was that no adverse report was communicated to him. However he did not receive the increment which fell due on the 1st April 1962. He wrote to the Government Agent, who was the head of his department, and inquired why he was not paid the increment.

B

p.28,1.36  
- p.29,1.4

C

The Government Agent wrote back saying -

p.363

"The annual increment that fell due to you on April 1st 1962 was not paid as you have not passed any of the Proficiency Tests prescribed at paragraph (2)(a) and (b) of Treasury Circular No.560 of December 4, 1961. The suspension has been ordered under paragraph 4 (b) of that circular."

D

E

The Appellant said that he had not sat for any proficiency test in Sinhala.

12. Treasury Circular No. 560 of the 4th December 1961 (P.9.) was in the following terms -

p.357

F

To: All Permanent Secretaries and Heads of Departments.

PUBLIC SERVANTS AND THE OFFICIAL LANGUAGE-IMPLEMENTATION OF THE OFFICIAL LANGUAGE ACT FROM JANUARY 1, 1961 - PROFICIENCY TESTS IN SINHALA FOR OLD ENTRANTS TO THE PUBLIC SERVICE.

G

Reference is invited to the Circular

No.CPA 278/60 of December 20, 1960, issued by the Secretary to the Cabinet, containing the Cabinet Conclusion of December 20, 1960, regarding the implementation of the Official Language Act, from January 1, 1961 and Treasury Circular No.536 of May 24, 1961, regarding the Retirement Scheme in respect of those old-entrant officers who are unable to satisfy the requirements of the Official Language Policy of the Government. The decision/s/ reached by Government in regard to the proficiency tests that should be passed by those officers who do not exercise the option to retire are given below -

2. (a) Old-Entrant Officers who reached the age of 50 years on or before January 1, 1961.

Officers in this category who do not elect to exercise the option to retire will be required to pass the following proficiency tests in Sinhala.

	Period of Time allowed to pass the Test		
	Sinhala Officers	Non-Sinhala Officers	
Grade 1 (3rd Standard Level) Proficiency Test	6 months	1 year	F
Grade 2 (5th Standard Level) Proficiency Test	1½ years	2 years	
Grade 3 (7th Standard Level) Proficiency Test	2½ years	3 years	G

(b) Old-Entrant Officers who were below the age of 50 years on January, 1, 1961.

Officers in this category who do not elect to exercise the option to retire will be required to pass the following proficiency tests in Sinhala :-

A	Period of Time Allowed to pass the Test	Sinhala Non-Sinhala Officers Officers	
		B	Grade 1 (3rd Standard Level) Proficiency Test
C	Grade 2 (5th Standard Level) Proficiency Test	1½ years	2 years
	Grade 4 (J.S.C. Standard Level) Proficiency Test	2½ years	3 years . . .
	. . . . .		
D	4. (a) The period of time allowed in respect of each of the proficiency tests referred to in paragraph 2(a) and (b) will count as commencing from January 1, 1961.		
E	(b) In view of the delay in holding the Proficiency Tests, it has been decided that failure on the part of any officer to pass the Grade 1 (3rd Standard Level) proficiency test to be		
F	held on February 17, 1962, will result in the increment that falls due to him on or after that date being suspended.		
G	If the test is not passed at the next succeeding examination, the suspension will be converted to stoppage, such stoppage operating until the test is passed . . . . .		

7. Please bring the contents of this Circular to the notice of all old-entrant officers concerned serving in your Ministry/Department."

13. The Appellant adduced a great deal of evidence to show the existence in Ceylon of a Tamil speaking community or communities, largely ignorant of Sinhala and necessarily put in a position of disadvantage by the introduction of Sinhala as the sole Official Language. A B

pp.39-49

Sir Kanthiah Vaithiyanathan, an ex-Government Agent, former Magistrate, former District Judge and a student of anthropology, testified that the Tamils of Ceylon had been a settled community for some time. (It was indicated at this point by the Respondent that the fact that Tamils are a distinct community in Ceylon was not contested but that it was not conceded that every Tamil in Ceylon belongs to that community). The Tamil community was divided into two sections, Ceylon Tamils and Indian Tamils. Its language was Tamil, was also the language of the Muslim community in Ceylon. C D E

pp.241-249

The witness produced Census Reports for 1946 and 1953 which showed a large Tamil minority and a considerable number of persons who could speak Tamil only.

He said that prior to 1956 the official language of Ceylon was English and the administration was conducted almost entirely in that language. However, at the village level, the administration was conducted in the language that the ordinary citizen understood. District Revenue Officers for the Tamil speaking areas were Tamils, and inquiries in District Revenue Officers' offices were nearly always held in the language of the area. A village headman in the Tamil speaking areas would issue notices and notifications and communicate with the public in Tamil. The F G H

witness added that in the Northern and Eastern provinces a large majority of the people are Tamil speaking and, speaking of the Northern province, which he knew intimately, he said that there the people by and large were certainly not in a position to understand the administration in the Sinhala language.

The witness said that before the passing of the Official Language Act when English was the language of the administration a Sinhalese who received a letter in English was in a position of disadvantage. Similarly a Tamil who received a letter in English was in a position of disadvantage. When the administration was conducted in English both Sinhalese and Tamil suffered disadvantages. The effect of passing the Official Language Act was that the disadvantage to the Sinhalese would be almost entirely removed and the disadvantage to the Tamils would be almost doubled.

14. Sauvumyammuttu Thondaman, a Member of Parliament and the President of the Ceylon Workers Congress, a trade union representing, amongst others, some 300,000 Indian Tamil plantation workers, gave evidence as to the effect of the Official Language Act on the Indian Tamils. His evidence was that these numbered in all almost a million, that their mother tongue was Tamil and that the children of the plantation or estate workers attended estate schools, where they received their education in Tamil. Most of the upcountry estate workers hardly knew Sinhala.

pp.100-  
105

In consequence of the Official Language Act electoral lists were drawn up in Sinhala (as also in English) but not in Tamil. The result was that although under the law a person is entitled to make a claim or an objection to the inclusion of a name in the electoral register, a Tamil would be unable so to do because he could not read the register and would not know what names were

there. Likewise, notices from Industrial or Labour Tribunals were now in Sinhala and correspondence sent by Government departments to estate Tamil workers was also mostly in Sinhala. This they found difficult, and they were today unable to participate in the affairs of the country.

A

pp.94-97

15. Another witness, M.K. Seyad Mohamed, spoke as to the situation of the Muslims of Batticaloa in the Eastern Province. He said that they are educated in Tamil, in which language they conduct their local affairs and that no one in that area knows Sinhala.

B

pp.61-85

16. Evidence as to the effect of the Official Language Act on the Tamils in the North and East was given by Murugesu Sivasithanparam, the Member of Parliament for Uduppiddy in the Northern Province. He testified that a very large majority of the inhabitants of the Northern and Eastern Provinces are only Tamil speaking. At or about the time of the passing of the Official Language Act the educational system was in Tamil. In Tamil schools the medium of instruction was Tamil, as, after the new Education Code, it was also in English schools, where however English was taught as a second language and in a few cases Sinhala as an optional third language. Administration at village level was carried on in Tamil and the Tamil villager in the general run of his life carried on his business in Tamil. The witness described the difficulties that Tamil people in the North have when a communication comes to them in Sinhala and recourse has to be had to the Sinhalese baker since no one else there is able to read or write Sinhala.

C

D

E

F

G

The witness testified also as to the position of Tamil public servants. From the point of view of the Official Language Act there were two categories of public servants - those recruited before 1956 who were known as old entrants and those recruited after 1956 known as new entrants. Those officers

H



recruited before 1956 were recruited in the English language. Most Tamil speaking public servants in Ceylon above the minor grades were educated either in English or Tamil. He did not think even a very small minority of them were able to read, write and talk Sinhala.

A

17. The Respondent called no witnesses in support of his case.

p.105,1.30

18. On the 24th April 1964, the District Court gave Judgment in favour of the Appellant.

B

pp.174-199

The findings of the learned Acting District Judge were as follows :-

(a) The documentary and oral evidence established that there was a contract of service between the Appellant and the Government of Ceylon.

C

(b) Although the Appellant was a public servant could be dismissed at will, nevertheless until he was dismissed he could enforce the terms of his contract against the Government. The weight of authority in England was in favour of that view, as were also decisions in Australia. In Ceylon the Roman Dutch law had been established as the common law of the ceded territory by the Royal Proclamation of the 23rd September 1799 and Ordinance 5 of 1835 and governed relations between Government and subject as well as between subject and subject. In Fraser v. The Queen's Advocate (Ramanathan's Reports 1863 - 68 p.316) it was held that "Her Majesty's subjects in this Island who had or might have any money due to them from the local Government for wages for salary, for work or materials, in short for anything due on an obligation arising out of contract were permitted to retain the old right given by the Roman Dutch

D

E

F

G

H

Law to sue the Advocate of the Fiscal now styled the Queen's Advocate for the recovery of this money". In the earlier case of Young v. Tranchell (Ramanathan's Reports 1863-68 p.160) the law had been similarly stated. From the time that these cases were decided there had been no case reported in Ceylon in which the proposition that a person in the civil employment of the Government of Ceylon serves on an enforceable contract of service terminable by the Crown at will has been challenged.

- (c) On the evidence it was apparent that in regard to a term in the contract of service there had arisen between the Appellant and the Government of Ceylon a dispute which was "real and tangible", and the Appellant was entitled to ask the Court for a declaratory Judgment to resolve this. Section 217 of the Civil Procedure Code enabled a party to seek a declaration of a right without seeking substantive relief or remedy and there was no authority for the Respondent's proposition that this section only refers to rights of a public nature and not to a right in terms of a contract.
- (d) Sinhala was the language of the Sinhalese community only. The language of the Tamils, Moors, Malays and Indians was Tamil. The evidence showed that by making Sinhala the only Official Language the Official Language Act conferred an overwhelming advantage on the Sinhalese community and resulted in the non-Sinhalese communities suffering disadvantages and disabilities. It was not a legitimate function of

A Parliament to pass such legislation,  
"for the purpose of an act must be  
found in its natural operation and  
effect". The learned Judge referred  
to Pillai v. Mudanayake (1953 A.C.  
514), where it was pointed out that  
"there may be circumstances in which  
legislation though framed so as not  
to offend directly against a  
B constitutional limitation of the  
power of the legislature may  
indirectly achieve the same result,  
and that in such circumstances the  
legislation would be ultra vires".  
C That applied to the present case.

(e) The learned Judge rejected the  
Respondent's submission that by  
Treasury Circular No. 560 of 1961  
the Government was exercising a  
D right that it had in terms of the  
contract to alter conditions of  
service quite irrespective of the  
Official Language Act and the need  
for its implementation. The  
E Secretary to the Treasury had not  
given evidence as to the purpose  
with which the Treasury Circular had  
been issued. Its terms showed that  
F it had been issued for one reason  
only, namely to convey to those to  
whom it was addressed viz. the  
Permanent Secretaries and old  
entrant officers the decisions of the  
G Cabinet with reference to various  
matters that arose in connection  
with the implementation of the  
Official Language Act. The effect  
of the Treasury Circular was not to  
H give officers notice of a change in  
their conditions of service.

(f) The learned Judge expressed  
considerable doubt whether it was  
possible for the Secretary to the  
Treasury to require an officer  
I already appointed by the Public

Service Commission in whom by Section 60 of the Constitution the appointment, transfer and dismissal and disciplinary control of public officers was vested to ask an officer to observe altered conditions of service without at least the concurrence of the Public Service Commission. Ministers have no control over the Public Service in Ceylon. It follows that the Secretary to the Treasury who is in the position of an agent to the Minister cannot have the power to alter the terms of an appointment made by the Public Service Commission which alone has that power.

- (g) In any event, although in terms of the contract of service the Crown was entitled to change a condition of service, it could not under that guise substitute a fresh contract for the one in existence without the consent of the officers concerned. To work in English was the essence of the contract, which the Appellant, recruited in that medium, entered into. To ask him to work in Sinhala would be to alter not a condition in his contract but the contract itself.
- (h) The action of the Government Agent of Kegalle in not paying the increment which the Appellant had earned by performing his duties with efficiency, diligence and fidelity, relying on what was set out in the Treasury Circular, was an error.

pp.17, 99  
191

19. The issues upon which the action was tried were, and were answered by the learned Acting District Judge, as follows :-

- (1) Is the Plaintiff entitled in terms of his employment under the Government of Ceylon to an increment of Rs.10/- a month which fell due on 1st April 1962? - Yes.

- (2) Was the said increment withheld by the Crown or its agents in terms of Treasury Circular No. 560 of 4th December 1962? - Yes.
- A (3) If so is the said Treasury Circular invalid? - Yes, in the sense that by it was sought to implement what was bad in law.
- B (4) Was it a term of the Plaintiff's contract of service under the Government that he should work in English? - Yes.
- C (5) Are the terms and conditions sought to be imposed by Circular No.560 part of the terms and conditions of the Plaintiff's contract of service? - No.
- (6) If not, is the Defendant entitled to impose the said conditions
- D (a) Unilaterally? - No.  
(b) By a Treasury Circular? - No.
- (7) If any one or more of these issues are answered in favour of the Plaintiff is the Plaintiff entitled to the declarations asked for in the Plaintiff? - Yes.
- E (8) Does the Plaintiff disclose a cause of action against the Crown? - Yes.

F The learned Acting District Judge accordingly ordered and decreed that the Appellant was entitled to the increment that fell due to him on the 1st of April 1962, and further ordered that the Respondent pay the costs of the action to the Appellant. p.200

G 20. By Petition of Appeal dated the 4th day of May 1964, the Respondent appealed against the said Judgment and Decree of the District p.201

p. 209 Court to the Supreme Court, which on the 30th day of August 1967 gave Judgment allowing the Appeal, setting aside the Judgment and Decree of the District Court and awarding the Respondent the costs of the Appeal. A

pp. 209-232 21. The principal Judgment (with which G.P.A. Silva J. agreed) was delivered by H.N.G. Fernando C.J.

pp. 230-232 The sole ground upon which the Judgment proceeded was that the terms of a public officer's engagement in Ceylon do not entitle him to institute a suit to recover earned wages or to enforce the terms of his engagement, the Court declining to rule on the validity of the Official Language Act or any other of the remaining issues in the case. B C

It is respectfully submitted that the Supreme Court was in error in so holding.

The finding that a public servant in Ceylon has no right to sue for his wages was based upon D

(a) a rejection of the view that this question falls to be determined according to the Roman Dutch Law. The learned Chief Justice cited the case of Simon Appu v. The Queen's Advocate (9 App. Cas. 571) in which it was held that "there is no authority for saying that the Roman Dutch Law of Holland, which was in force in Ceylon at the date of its conquest by the British, and has not since been abrogated, empowered the subject to sue the Government. Instead the right to sue exists because there had been a very extensive practice of suing the Crown which was recognised by the Legislature and such suits are now incorporated into the law of the land". The learned Chief Justice referred also to the E F G H

A fact that the power to appoint  
public officers in Ceylon was a  
power derived from and exercised on  
behalf of the Crown. The efficacy  
or validity of appointments made by  
the executive in Ceylon was therefore  
referable to the law of England. It  
followed that the nature and legal  
effect of the relationship  
B constituted by such appointments  
had also to be determined by English  
law.

(b) a conclusion that in English law  
C the terms of a public officer's  
engagement to serve do not enable  
him to institute a suit to recover  
earned wages or to enforce the terms  
of his engagement. The learned  
D Chief Justice did not in terms say  
whether he thought this immunity  
from suit on the part of the Crown  
was referable to the Royal  
Prerogative or was an implied term  
resting upon public policy, nor  
E indeed whether or not he thought  
that a contract of service subsisted  
between Crown and public servant.  
His conclusion however was that a  
F public servant could not enforce  
the terms of his engagement, not  
being terms laid down by statute.

22. On the 6th day of November 1967 the p. 236  
Supreme Court granted the Appellant  
Conditional Leave to Appeal against its said  
G Judgement and Decree and on the 17th day of p. 239  
November 1967 Final Leave.

H 23. The Appellant respectfully submits that  
the Supreme Court was in error in holding  
that, on the question whether a public servant  
is entitled to sue the Crown for the  
recovery of earned wages, the Roman Dutch  
Law did not apply. Although admittedly the  
Crown's right, during the Colonial era, to  
appoint officers to the public service in

Ceylon, was derived from the Crown's Prerogative, it does not follow that in the matter of determining the nature and legal effect of the contract itself, the English law has displaced the Roman Dutch Law. It is submitted that the terms and conditions of the appointment, once it is made, are governed by Roman Dutch Law and that in Roman Dutch Law there may be a subsisting contract between Government and public servant (as in terms there was in the present case), the terms and conditions of which are enforceable at the suit of the servant. It is submitted that there is no distinction in Roman Dutch Law between a contract of service between subject and subject and a contract of service between subject and Crown.

It is conceded that in Ceylon, as in England, the Crown is entitled to dismiss a public servant at will. This however is not and was never derived from the English doctrine of public policy. It is now derived from Section 57 of the Ceylon (Constitution) Order in Council, which so provided, and it was, in the Colonial era, derived from the Royal Instructions to the Governor, which expressly directed that all commissions and instructions to be granted by him were to be for pleasure only. Neither the Royal Instructions nor the Colonial Regulations contained any provision as to whether Crown employees can enforce the terms and conditions of their contracts and this therefore, it is submitted, is a matter to be determined under the common law of Ceylon, which is the Roman Dutch Law, and not under the English doctrine of public policy.

If, contrary to the Appellant's submission, this matter is governed by the English Law, it is respectfully submitted that here the weight of authority is in favour of the view that those in the civil, as opposed to the military, service of the Crown are entitled to maintain a suit to enforce their contract of service (provided it has not been terminated by the Crown) and that this is the correct view of the law.



A 24. With respect to the other issues arising in this Appeal it is respectfully submitted that the findings of the learned Acting District Judge, which have not been reversed or set aside by the Supreme Court, are correct in law and upon the evidence adduced in the case, and should be affirmed.

B 25. The Appellant respectfully submits that this Appeal should be allowed, the said Judgment and Decree of the Supreme Court of Ceylon of the 30th day of August 1967 set aside and the said Judgment and Decree of the District Court of Colombo dated the 24th day of April 1964 restored and that the Respondent should be ordered to pay the Appellant's Costs of this Appeal and throughout, or that the Appellant should be granted such further or other relief as may seem meet, for the following amongst other

D

R E A S O N S

(1) BECAUSE an increment of salary of Rs. 10/- per month fell due to the Appellant on the 1st April 1962.

E (2) BECAUSE the Roman Dutch Law was applicable to the terms and conditions of the Appellant's engagement with the Government of Ceylon and their enforceability.

F (3) BECAUSE the Roman Dutch Law entitled the Appellant to enforce the terms and conditions of his engagement with the Government of Ceylon and to recover earned salary.

G (4) BECAUSE if English Law applies, the Appellant is equally entitled to enforce the terms and conditions of his said engagement and to recover earned salary.

(5) BECAUSE at all material times a contract of service subsisted between the Appellant and the Government of Ceylon.

- (6) BECAUSE by the terms and conditions of the Appellant's contract of service or engagement he was entitled to be paid the said increment.
- (7) BECAUSE the declarations prayed for by the Appellant in the suit related to rights that had accrued to him under his contract of service or engagement with the Government of Ceylon, and the Appellant was in law entitled to the relief claimed. A B
- (8) BECAUSE, if the Government of Ceylon by its refusal to pay the said increment repudiated the Appellant's contract of service, the Appellant never accepted such repudiation.
- (9) BECAUSE Treasury Circular No. 560 of 1961 did not purport and was not effective to change or vary the terms and conditions of the Appellant's service with the Government of Ceylon. C
- (10) BECAUSE the Government of Ceylon was not entitled unilaterally to alter the terms and conditions of the Appellant's contract or engagement. D
- (11) BECAUSE, if there was a power in the Government of Ceylon unilaterally to alter the terms and conditions of the Appellant's contract or engagement, Treasury Circular No. 560 of 1961 was not issued in exercise of such power. E
- (12) BECAUSE the Government of Ceylon was not entitled to alter the substance of the Appellant's contract. F
- (13) BECAUSE Treasury Circular No. 560 of 1961 was issued in implementation and/or under the compulsion of the Official Language Act. G
- (14) BECAUSE the Official Language Act contravenes Section 29(2) of the Constitution and is void.

- (15) BECAUSE the Official Language Act imposes on members of the Tamil speaking community or communities disabilities to which persons of other communities are not liable and confers on persons of other communities advantages which are not conferred on persons of the Tamil speaking community or communities.
- A
- (16) BECAUSE Treasury Circular No. 560 of 1961 was unreasonable and/or illegal and/or invalid and/or not binding on the Appellants.
- B
- (17) BECAUSE the stopping of the Appellant's said increment was in obedience to and in pursuance of the order or direction contained in Treasury Circular No. 560 of 1961.
- C
- (18) BECAUSE Treasury Circular No. 560 of 1961 did not give the Appellant notice of a change or variation in the terms and conditions of his contract of service or engagement.
- D
- (19) BECAUSE the Judgment of the District Court of Colombo of the 24th day of April 1964 was right for the reasons therein stated.

DINGLE FOOT

MONTAGUE SOLOMON

No. 38 of 1963

IN THE PRIVY COUNCIL

ON APPEAL  
FROM THE SUPREME COURT OF CEYLON

BETWEEN :-

CHELLIAN KODEESWARAN                      Appellant

- and -

THE ATTORNEY-GENERAL OF  
CEYLON    Respondent

---

CASE FOR THE APPELLANT

---

MESSRS. SMILES & CO.,  
15, Bedford Row,  
LONDON, W.C.1.