

PREMADASA AND OTHERS
V
SABARAGAMUWA DEVELOPMENT BANK AND OTHERS

SUPREME COURT
WIGNESWARAN, J.
DISSANAYAKE, J AND
RAJA FERNANDO, J
SC (FR) NO. 5085/2003
23rd AUGUST, 1ST SEPTEMBER, 2004

Fundamental Rights – Fixation of salary on promotion - Invalidity of adding increments for past service - Chapter VII of the Establishments Code - Decision to recover increments invalidly given - Article 12 (1) of the Constitution.

The four petitioners originally held supervisory grade III appointments in the Regional Rural Development Bank Sabaragamuwa. They were then appointed to the Sabaragamuwa Development Bank (1st respondent) as supervisors Grade III; but they functioned as “Executive Grade” employees and were paid a monthly allowance of Rs. 3200/- in 2001 and 2002. They were thereafter promoted as officers Grade I from 01. 01. 2002.

The starting salary of Grade I in the new post was Rs. 11,310/- but the 1st petitioner connived with the establishment to take into account the allowance of Rs. 3200/- paid previously and on the basis of seven assumed increments each Rs. 265/- The 1st petitioner had himself and the 4th petitioner placed themselves on a salary of Rs. 13,165/- and had the 2nd and 3rd petitioner placed on a salary of Rs. 12,900/- each.

Thereafter the establishment realized that the increment is not a right but had to be earned under sections. 10.1 and 10.9 Chapter VII of the Establishments Code; whereupon on 12. 09. 03 the four petitioners were informed that they had to earn the increments on the basic salary of Rs. 11, 310/- and the sums they had been paid as increments since appointment after 1.1.2002 in excess of what they were entitled to would be recovered, amounting to about Rs. 94,515/-

The petitioners complained of infringement of Article 12 (1) of the Constitution.

Held:

1. Increments of salary is not a right and had to be earned. As such the decision to recover the monies paid to the Petitioners after 1.1.2002 were invalidly paid.

2. There was no violation of the petitioners's fundamental rights under Article 12 (1) of the Constitution.

APPLICATION for relief for infringement of fundamental rights. .

J. C. Weliamuna for petitioner

Sunil F. Coorey with C. Liyanage for 2nd to 7th respondents.

October 19, 2004

WIGNESWARAN, J.

The Petitioners were graduate employees of the Sabaragamuwa Development Bank, Ratnapura, holding managerial posts which they alleged were Supervisory Grade III appointments. Prior to the establishment of the said Bank on 1.1.99 the Petitioners were employees of the Regional Rural Development Banks holding Grade III Supervisory appointments. The Petitioners looked forward to being appointed to an "Executive Grade" which was soon to be established in the 1st Respondent Bank. Since functions of such a Grade were performed by them, though the Grade had not been established, the Petitioners were paid a sum of Rs. 3200/- as monthly allowance for the period 1. 1. 2000 to 31. 12. 2000. This was paid in the year 2001 too.

By letters dated 22. 10. 2001 (P14A to P14D) the Petitioners were informed that they would be absorbed into the "Officer Grade I". They were told by the same letters that the allowance of Rs. 3200/- per month continue to be paid until the Petitioners were placed on proper scales.

The Petitioners were promoted to the "Officer Grade 1" with effect from 1. 1. 2002. But their letters of appointment dated 3.12.2001 (P15A to P 15D) stated that the allowance of Rs. 3200/- per month would not be paid after 31. 12. 2001 since the new salary payable to them had taken into account the allowance that was earlier paid to them.

From January 2002 up to August 2003, Petitioners were paid a salary which fell within the salary scale 11310/— 16430/-

265/- X 8- 300/- x 10

The 1st Petitioner received Rs. 11310/- + 265 X 7 = 13165/=-, the 2nd Petitioner 11310/=-+ 265X6=12900/-, the 3rd Petitioner also Rs. 12900/=- and the 4th Petitioner Rs. 13165 /=- as paid to the 1st Petitioner.

By letters dated 12.09.03 (P21A - P21D) the Petitioners were informed as follow:

- i. That they were entitled only to the increments earned after 1.1.2002
- ii. Accordingly all excess payments amounting to about RS. 94515/- paid until then, would be recovered.
- iii. That the petitioners would be placed on the basic salary of Rs. 11310/- as at 1.1.2002.

This was objected to by the Petitioners (P23A - P23D)

The Petitioners came into Court thereafter alleging infringement of their fundamental rights guaranteed to them under Article 12 (1) of the Constitution and seeking a declaration regarding such alleged violation, an order nullifying the decisions communicated by P21A - P21D and asking for interim relief and other reliefs.

An undertaking was given by Counsel for the 1st to 7th Respondents on 19. 11. 2003 that the purported excess salary paid to the Petitioners would not be recovered until the determination of this application. Leave to proceed in respect of the alleged infringement of Article 12 (1) of the Constitution was granted on 17.02.04

This matter came up before us on 23. 08. 04 and written submissions were thereafter filed.

The learned attorney at - law for the Petitioners in his written submissions has submitted as follows:

“In order to implement (the) decision of the Board of Directors and to place the Petitioners in the relevant salary step the management had to take into account the interim allowance of Rs. 3,200/- Thus the management made the following adjustments by way of increments in respect of each of the Petitioners.

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- 1st Petitioner - 11,310/- + 265X7= 13,165/= (7increments)
2nd Petitioner - 11,310/- + 265X6= 13,165/= (6 increments)
3rd Petitioner - 11,310/- + 265X6= 13,165/= (6 increments)
4th Petitioner - 11,310/- + 265X7= 13,165/= (7increments)

It was contended by the learned Counsel for the Petitioner at the hearing that unless they were placed at the abovesaid salary scale they would have been deprived and denied of at least three increments due to no fault of the Petitioners. He contended that the Petitioners were entitled to earn three increments during the period 1999 to 2002.

The learned Counsel further pointed out that it was the Board of Directors who should determine the salaries of its employees and that precisely was what had taken place; the letters P15A to P15D having been signed by the General Manager. He disputed that the Petitioners could have been placed on the initial salary step of Rs. 11310/-. He also disputed the contention that salaries of the Petitioners should be decided by the Collective Agreement (P13) signed between the Bank (1st Respondent) and the Ceylon Bank Employees' Union. He argued in the light of Section 30 (2) of the Regional Development Banks Act, No. 6 of 1997, if the Board of Directors had decided to place the Petitioner on a higher salary scale, then there was no basis to vary its decision based on the Collective Agreement. In any event he said there was no basis for the recovering of the payments duly made.

The Learned Counsel made a significant plea which is also reflected in the written submissions - "The Petitioners were denied increments due to no fault on the part of the Petitioners. Thus at least the salary of the Petitioners should be Rs. 11310/- + 265 X3= 12105= as at 1.1.2002". This shows that the Counsel himself seems to have had reservations with regard to the adding up of seven and six increments arbitrarily.

The counter affidavit filed by the 1st Petitioner has stated that it was only the salary scale that was to be decided according to the Collective Agreement. The salary step had to be decided according to the provisions of Chapter VII of the Establishments Code and the Administration and Disciplinary Hand Book of the Bank.

All these submissions would now be considered

The basic question to be answered is whether the Petitioners on promotion to "Officer Grade I" were to be placed at the initial salary step of Rs. 11310/- or were entitled to be placed at a salary step above the initial salary. The rationale for placing the Petitioners at a step above the initial salary would be that they had earned certain increments already. In this instance the learned Counsel for the Petitioners had argued that the Petitioners were at least entitled to increments for the years 1999 to 2002

Chapter 7 Section 10: 1 and 10: 9 of the Establishments Code refers to increments as follows:

- 10:1 "An officer is not entitled to draw an increment as of right. He is required to earn it by the efficient and diligent discharge of his duties and by serving the incremental period in full (see sub-section 10:9). A certificate to that effect should be signed by the appropriate authority before an increment is paid"
- 10:9 "An increment should be granted only if the full incremental period has been served. Any period of leave with full pay or half pay will count as service for increments"

Under the Collective Agreement (P 13) there was no dispute that the Petitioners were entitled to be placed at the salary scale for "Officer Grade" 1 which was

11310 - 16430
265X8-300X10

The increments of 265X8 and 300X10 were to be earned only after an officer was placed at the initial salary scale of Rs. 11310/-. The Petitioners were entitled to be considered for the abovesaid salary scale of Rs. 11310/= only from 01. 01.2002 and not before that. Therefore the argument that the Petitioners had worked during the period 1999 to 2002 and thus earned 3 increments appears untenable. There was no question of the Petitioners being entitled to a salary scale or Rs. 11310/- in the year 1999 nor 2000 nor 2001. When they were placed on 01. 01. 2002 in this salary scale only could they have earned an increment. That is, after they became entitled to receive the new salary scale and not before it.

We are unable to accept the submission that in order to implement the decision of the Board of Directors the management had to place the Petitioners in the relevant salary step. The interim allowance of Rs. 3200/ was paid monthly on account of the fact that the Petitioners performed the functions of an executive Grade as from 1999. Nor did the Board of Directors resolve to predate the appointment of the Petitioners to a date anterior to 01. 01. 2002. They only resolved that the salary scales given in the Collective Agreement (P13) should come into force from 01.01.2002.

There seems to be truth in the submissions of the learned Counsel for the Respondents that the 1st Petitioner who was in charge of computation of salaries of all employees of the Bank had conveniently given himself and the 4th Petitioner 7 increments each and to the 2nd and 3rd Petitioners 6 increments each from 01.01.2002 although there seems to be no basis whatsoever for such a course of action. Even the learned Counsel for the Petitioners only argued for 3 increments. He placed no valid grounds before us as to the basis of granting 7 increments and 6 increments to the Petitioners as referred to above. There had been no decision arrived at by the Board of Directors of the 1st Respondent Bank that any unearned increments should be paid to any particular employee.

Section 30(2) of the Regional Development Banks, Act. No. 6 of 1997 was referred to. It has no relevance to this case. The Board of Directors did not decide to place the Petitioners on a higher salary scale other than to abide by the Collective Agreement by which the salary scale was determined.

If for argument purposes the 7 and 6 increments allowed to the Petitioners had been wrongly determined and say only 3 increments were payable, then the amount paid in excess of the three increments would have to be refunded. Thus the contention that a duly paid payment cannot be recovered would fail even if the payment was "duly" paid could certainly be recovered. It is to be noted that the salary anomaly in respect of the Petitioners was brought to the notice of the Board of Directors of the 1st Respondent Bank by P22 and thereafter the board decided to correct the anomaly and recover over payments which had no basis and which seem to have been obtained by the Petitioners without a legal basis. Therefore steps to recover over payments cannot be faulted.

We therefore find that there has been no violation of the fundamental rights of the Petitioners under Article 12 (1) of the Constitution and that the decisions communicated by P21 A to P21D were valid in law. We dismiss this application fixing a sum of Rs. 10000/- as costs payable to the 1st Respondent by the Petitioners jointly and severally.

DISSANAYAKA, J.- I agree

FERNANDO, J.- I agree

Application dismissed
