

A. E. M. G. FERNANDO
VS
PEOPLE'S BANK AND OTHERS

SUPREME COURT,
BANDARANAYAKE, J
UDALAGAMA, J AND
DISSANAYAKE, J
SC APPLICATION (FR) 283/2004
28TH JANUARY AND 1ST AND 2 ND MARCH, 2005

Fundamental Rights-Failure to grant extension of services-Abrupt termination of services-failure to give reason for premature termination of services beyond 28.06.2004-Legitimate expectation of extensions-Article 12(1) of the Constitution.

The petitioner was the Chief Manager of the Internal Audit Department of the People's Bank. On reaching 55 years age, he was given three extensions in terms of Circular No. 323/2001. His last extension was from 28.06.2003 to 28.06.2004. On 16.06.2004, twelve days before his 58th birthday, the letter P 18 was received (from the Bank) informing that his services will not be extended beyond 28.06.2004. No reasons were given for that decision.

The justification for the termination of services is contained in R4 filed with the objections of the Deputy General Manager. This appears to be a report by an officer albeit unsigned.

HELD:

- (1) The sudden termination of services by P 18 at short notice and without reasons was violative of Article 12(1) of the Constitution.
- (2) The petitioner had a legitimate expectation of receiving extensions up to the 60th year, in normal circumstance which expectation had been denied without adducing any reasons.

Case referred to :

1. *Surangani Marapona vs Bank of Ceylon and Others* (1997) 3 Sri L. R. 156

APPLICATION for relief for infringement of fundamental rights.

Saliya Peiris with *C. Madanayake* for petitioner.

Wijedasa Rajapaksa, P. C., with Sasika Dissanayake for respondents

Cur.adv.vult

8th July, 2005

UDALAGAMA, J.

Admittedly the petitioner as at the date of this petition was the Chief Manager of the Internal Audit Department of the People's Bank and on his reaching the age of 55 years was granted extensions of service for the past 3 years. The last extension of service for one year was granted from 28.06.2003 to 28.06.2004.

It is the contention of the petitioner that he had satisfied all the requirements regulating the granting of extensions as set out in circular No. 323/2001 and complains that on 16.06.2004, 12 days before his 58th birthday that he received the impugned letter marked and filed of record as P18 informing him that his services will not be extended beyond 28.06.2004.

Learned Counsel for the petitioner submitted that *vide* regulations as found in the aforesaid circular No. 323/2001 referred to above, which also admittedly regulates the granting of extensions, declares that the age of retirement of Bank employees shall be 55 years, but however that extensions of service of a Staff grade employee would be granted at the discretion of the management for a specific period beyond 55 years of age and up to 60 years. *Vide* the contents of the same circular the General Manager or the Chief Executive Officer of the Bank is tasked with the discretion to grant such extension taking into consideration factors enumerated in the said circular.

Paragraph 10 of the circular inter-alia deems it necessary in the event the applicant's application for an extension is unsuccessful, to be notified of such refusal of extension of service, affording him an opportunity to re-apply for a service extension for a further period in terms of the said circular. The failure of the unsuccessful candidate to have done so would be deemed to have shown that such applicant was not interested to further serve the aforesaid Bank.

Paragraph 12 of the circular specifies the requirement that in the event of an applicant's extension of service not been recommended that a

separate report stating the reasons of such non recommendation be sent directly to the Deputy General Manager of the respondent Bank.

Apparently there appears to be no evidence that such steps had in fact been taken.

The learned President's Counsel for the 1st to 9th respondents in his written submissions to this court has referred this court to items Nos. 1-4, and 6 and 7 of the aforesaid circular No. 323/2001 and has further submitted that the 1st respondent institution being a business entity engaged in a highly competitive field of banking activities is vested with full powers and discretion in recruitment, transfers, promotions and the granting of extensions of services to its employees.

However, the respondent Bank is an institution of the State. Hence I am of the view that this court in the circumstances need to examine the complaint of the petitioner that the petitioner's fundamental rights guaranteed by Article 12(1) of the Constitution have been violated consequent to the acts of the respondent Bank. Besides discretion in my view need to be exercised properly and reasonably.

That no adequate and specific reasons for the non recommendation of the petitioner's application for an extension of service are forthcoming in respect of the petitioner's application, is patent.

R4 filed with the objections of the Deputy General Manager appears to be a report made out by an officer, albeit unsigned, to be the basis of the non recommendation and contains no reasons for such non recommendation.

P8 the impugned order refusing the petitioner's application for extension of service is bereft of any reasons for such refusal. Besides P8 is dated 14.06.2004 and same being an adverse recommendation and undoubtedly delayed, I am of the view that the said impugned notification clearly contradicts the provisions of the said circular No. 323/2001.

The absence of a separate report giving reasons for the refusal of an extension which had to be submitted to the Deputy General Manager without delay, is also contrary to the provisions of the aforesaid circular.

As submitted by the learned Counsel for the petitioner the decision of this Court in *Surangani Marapona vs. Bank of Ceylon and others*⁽¹⁾ held that 4 months delay to decide an application for an extension of service “had been an inordinate delay”.

In the instant case the delay to refuse the petitioner’s application, *vide* the impugned P8, left the petitioner barely 14 days to retire from the Bank. Importantly no reasons for such delay were also forthcoming. The necessity to give reasons for its decision to refuse an application for an extension was also emphasised in *Surangani Marapona vs. Bank of Ceylon* (supra) when this court held that, “there should be sufficient reasons to support such decision beyond doubt”.

I would also agree with the submissions of the learned Counsel for the petitioner that the latter had a legitimate expectation to serve the respondent Bank on annual extensions of service upto the age of 60 years and that the petitioner is entitled to be apprised of the reasons to justify the denial of the aforesaid legitimate expectation of the petitioner to serve the Bank until the petitioner reached the age of 60 years.

In the aforesaid circumstances and subsequent to careful scrutiny, I am of the view that inter alia the inordinate delay in determining and notifying the refusal of the petitioner’s application and having failed to give reasons for the refusal of an extension the management of the respondent Bank has violated the fundamental rights guaranteed to the petitioner under Article 12(1) of the Constitution and this court would make order quashing P8 and further that the management of the respondent Bank grant to the petitioner an extension of service from 28.06.2004 to 28.06.2005. No costs.

BANDARANAYAKE, J. —I agree.

DISSANAYAKA J. —I agree.

Relief granted.
