

SUNDARALINGAM

v.

RONNIE DE MEL, MINISTER OF FINANCE AND OTHERS

COURT OF APPEAL

L. H. DE ALWIS, J. AND B. E. DE SILVA, J.

C.A. NO. 217/81

D.C. COLOMBO 3133/Z

11, 12 AND 24 JANUARY 1983

*Pension — Conversion from sterling — Rate***Held —**

The appellant retired from the post of Professor of Mathematics on 15.10.40. That would be the date on which his pension fell due and since he is a Sri Lankan and continued to remain in the Island on retirement, the rate of payment of his sterling pension under Regulation 1442 (Section 13 of the Financial Regulations of 1947 Part II Establishments) which is the regulation that applies will be Rs. 15/- to a sterling. It is at this rate that his pension had been paid from the date of his retirement and he is not entitled to anything more than what he has already been paid. The Monetary (Amendment) Law No. 16 of 1977 has no application because that is a law which relates to the rates at which the Central Bank may buy and sell spot foreign exchange and not to pensions.

APPEAL from judgment of the District Judge of Colombo.*C. Ranganathan, Q.C.* with *R. Thevarajah* for appellant.*K. D. K. T. Tennekoon, D.S.G.* with *K. C. Kamalabayson, S.S.C.* for respondents.*Cur. adv. vult*

11, May 1983

L. H. DE ALWIS, J.

The appellant was employed under a contract of service by the Government of Ceylon, as Professor of Mathematics at the Ceylon University College on a Sterling salary of £960 per annum by the letter of the Colonial Secretary dated 7th October 1922 (P1). The letter states that the Government of Ceylon calculates the Sterling at Rs. 15/- for the purpose of the payment of salary in the Colony, but that the rate is liable to

alteration. Paragraph 5 of the letter states that the principal rules as to pension are contained in the enclosed print, Eastern No. 74, (P1A). Paragraph 8 of Eastern No. 74 relating to rules as to Leave, Pension etc. dated August 1920, states that the Government of Ceylon calculates a £ Sterling at Rupees 15 for the purpose of the payment of salary or pension in the Colony. This rate was, however, liable to alteration.

Prior to Eastern No. 74, circular No. 23 dated 22.2.1906 (P2) issued by the Colonial Secretary applied. According to this circular a scheme for re-organizing the salaries of officers in the Public Service had been approved by the Legislative Council and was sanctioned by the Secretary of State, with effect from 1.1.1905 and a scale of Sterling salaries was provided in lieu of the rupee scale then in force. Paragraph 4 of the Circular stated that the sterling salary will be paid in Ceylon in rupees at a rate of exchange periodically fixed and proclaimed. Pension if drawn in Ceylon will also be so paid, the present rate being 1s. 4d. to the rupee.

The appellant retired from Government Service on 15th October 1940 and was granted an annual pension of £563, 16s. 4d., by letter dated 8.10.1940. (P8).

The Rules relating to Rates of Exchange for Payment of Salaries and Pension were later incorporated in the Government Financial Regulations. It is stated that the relevant regulation is 1084 (11) (c) which was introduced by correction slip No. 142 dated 14.9.36, (P4). It provided that an officer who is appointed after January 1, 1905 is entitled to be paid at the rate of 1s. 4d. to the rupee or the rate of the day, whichever is more favourable to the officer. If the salary due to the officer in sterling is required to be paid locally, it will be converted into rupees at the *local bank's buying rate of exchange* on the date of payment or will be paid in accordance with the rupee scale, at the officer's option".

It is therefore stated that when the Monetary Law (Amendment) Law No. 16 of 1977 came into operation on 15.11.77 and fixed the rate of conversion at Rupees Thirty five thousand five hundred

and fifty seven and cents fifty, plus or minus, (Rs. 35,557.50) to one thousand pounds sterling, subject to the official rate of Exchange as determined by the Governor of the Central Bank of Sri Lanka, from day to day it fixed the *local bank's buying rate of exchange* from day to day at that amount. The appellant claims to be entitled to receive his pension at this rate or in pounds sterling according to the contract of service. He has annexed to his plaint, a schedule marked A, setting out an account of the monies due to him on this basis. He prays, inter alia, for a declaratory decree that he is entitled to the payment of his pension of Five Hundred and sixty three pounds sterling, sixteen shillings and four pence, calculated at the rate of Rs. 35/55 per Pound Sterling (plus or minus) per annum from 16.11.77.

The position taken up by the two defendants-respondents and the necessary party (hereinafter referred to as the respondents) is that the appellant was paid his pension at the rate of Rs. 15/-per sterling pound calculated in terms of Financial Regulation 1442 which in 1947 replaced the earlier regulations relating to the Rates of Exchange for Payment of Pensions and Gratuities, and that the Monetary Law (Amendment) Law No. 16 of 1977 which determined the rates of buying and selling spot foreign exchange by the Central Bank has no relevance to the pension payable to the appellant. The respondents also pleaded that the plaint does not disclose any cause of action; that the Court has no jurisdiction to hear and determine the action; and that the appellant has no absolute right to a pension in terms of the Minutes on Pensions.

Fifteen issues were raised at the trial. The learned Judge held that the Court had jurisdiction to hear and determine the action; that the plaint disclosed a cause of action; and that the declaratory decree prayed for in paragraph (b) of the prayer to the plaint is one that could be granted if the appellant could prove that he was entitled to it. But at the same time the Judge held that the appellant was not entitled to be paid his pension at the fluctuating rates of exchange fixed and published by the Governor of the Central Bank of Ceylon in terms of the Monetary

(Amendment) Law No. 16 of 1977, as the Law was inapplicable to the payment of pensions and that the appellant was therefore not entitled to claim the arrears mentioned in schedule A annexed to the plaint. He accordingly dismissed the appellant's action without costs and it is from this judgment that the appellant now appeals.

At the hearing of the appeal the only matter that was argued before us was the question of what was the correct rate of exchange in rupees at which the appellant was entitled to be paid his pension of £563 16s. 4d. per annum, from the date 16.11.1977, when the Monetary (Amendment) Law No. 16 of 1977 came into operation.

The letter of appointment P1 placed the appellant on a sterling salary which the Government according to the letter, calculated at the rate of Rs. 15/- for a pound sterling, although the actual rate of exchange at the time was only Rs. 13/33. The rate was however liable to alteration. Paragraph (8) of the Rules relating to the payment of salary or pension, Eastern No. 74 (P1A), referred to in the letter of appointment, is in the same terms as paragraph (1) of the letter of appointment in regard to the value of the £ sterling in relation to the local rupee currency, that is, Rs. 15/- to a £ sterling. The rate of exchange stipulated in the letter of appointment dated 7.10.22, is in accord with that set out in Eastern No. 74 issued by the Colonial office in August 1920. Prior to Eastern No. 74 there was circular No. 23 dated 22.2.1906 (P2) issued by the Colonial Secretary, which states in paragraph 4 that the sterling salary will be paid in Ceylon in rupees at a rate of exchange periodically fixed and proclaimed. The pension if drawn in Ceylon would also be so paid. The then rate was 1s. 4d. to the rupee which is equivalent to Rs. 15/- to a pound sterling. Be that as it may, P2 being a circular of an earlier date is superceded by the later Rule Eastern No. 74 (P1A) which fixed the rate of the pound sterling at 15 Rupees and it is on that basis that payment of the salary and pension of the appellant was made. P1A was annexed to the letter of appointment P1.

Section 33 of the Minutes on Pension appearing in the Civil List of 1929 (P3) sets out the *Rate of Exchange for Payment of Pensions*, as follows: " Officers of the Ceylon Government on retirement residing in any part of Asia (except Cyprus) in any rupee using country or in any country the currency of which is based on a silver standard, will draw their pensions in the local currency at the current rate of exchange between the country in question and Ceylon or England according as the pension is paid direct by the Ceylon Government or through the Crown Agents..... "

By section 2 of Ordinance No. 2 of 1947 the Minutes on Pensions is made part of the " written law " of Ceylon from 1901.

Section 33 of the Minutes on Pensions is reproduced in identical terms in the 1936 Edition of the Ceylon Civil List. The Minutes on Pensions are dated 5.2.1934 and cancel all the previous Minutes on the subject of pensions.

In 1932 the first edition of the Financial Regulations of the Ceylon Government came out and section 11 which contains regulations 1084 and 1085 at page 143 provided for the rates of exchange for payment of sterling salaries. Correction slip No. 38 of 28.8.1933 amended regulation 1085 and introduced Regulation 1086. Correction slip 142 dated 14.9.1936 (P4) relating to *Rates of Exchange for Payment of Salaries* deleted section 11 as amended by correction slip No. 30 and substituted in its place a new section consisting of regulations 1083 and 1084. It further provided that the Regulations in the new section, were applicable, *mutatis mutandis*, to payment of pensions also. Regulation 1083 (11) was subsequently exempted from application to payment of pensions.

Since the rate of exchange payable for pensions was now provided for in the Finance Regulations section 33 of the Minutes on Pensions dealing with it became redundant and was thereafter deleted. Financial Regulations 1083 and 1084 from

then onwards controlled the rates of exchange payable in respect of pensions and Rule Eastern No. 74 ceased to apply thereafter to this matter.

The appellant retired from Government Service in 1940, and at the time, regulations 1083 and 1084, as amended by Correction slip No. 142 of 1936 (P4), were applicable.

It is on Regulation 1084 (11) (c) that learned Queen's Counsel for the appellant relies for the calculation of the exchange rate for the payment of the appellant's sterling pension. An extract of that Regulation which is marked P3B reads as follows: " If appointed after January 1, 1905, at 1s. 4d. to the rupee or the rate of the day, whichever is more favourable to the officer. If the salary due to the officer in sterling is required to be paid locally, it will be converted into rupee at the *local Bank's buying rate of exchange* on the date of payment, or will be paid in accordance with the rupee scale, at the officer's option ".

Learned Queen's Counsel submitted that the pension rights of the appellant under these regulations were unaffected by the Constitutions of 1948, 1972 and 1978, (P3H1, P3D1 and P2K) that came into force from time to time. Article 64(1) of the Constitution of Ceylon 1948 provided that: " All pensions, gratuities and other like allowances which have been or which may be granted to any persons who have been, and have ceased to be, in the service of the Crown in respect of the Government of the island at any time before the date on which this part of this Order comes into operation, or to the widow, children or dependants of such persons, shall be governed by the written law under which they were granted, or if granted after that date, by the written law in force on that date, or in either case, by any written law made thereafter which is not less favourable. The relevant article of the succeeding Constitutions are more or less in similar terms.

The Monetary Law (Amendment) Law No. 16 of 1977 came into operation on 15.11.77. Learned Queen's Counsel therefore submitted that the appellant is entitled to take advantage of

section 76A (1) and (2) as a written law which is "not less favourable" to the appellant, as enacted in the Constitutions. This section provided that the Governor of the Central Bank determines the rates at which the Central Bank may buy and sell spot foreign exchange and also the minimum and maximum rate at which any Commercial Bank may buy spot exchange. It is therefore argued that the appellant is entitled to have his sterling pension paid at the official Bank buying rate of sterling pounds which at the time, was as set out in column 3 of schedule A annexed to the plaint. On 16.11.77 the buying rate of a sterling pound, according to schedule 'A' to the plaint, was Rs. 29/04, and on 18.2.80 it was Rs. 35/27.

In my view the submission of learned Counsel must fail for the following reasons: The first is that Regulation 1084 (11) (c) applies only to officers who draw Rupee salaries (and pensions) and not to those who draw sterling salaries (and pensions). Regulation 1084 is headed *Rupee Salaries* and sub paragraph (11) clearly indicates that it refers to officers drawing rupee salaries. It reads as follows: "An officer will be paid his *rupee salary* converted into sterling at the rate of exchange indicated below in respect of all other periods . . ." The second reason is that Financial Regulation 1084, and the connected regulations have, prior to the promulgation of the 1948 Constitution, been replaced by new regulations 1410, 1441, 1442 in section 13 of the 3rd Edition of the Financial Regulations of 1947 Part II Establishments. Section 13 which deals with the Rates of Exchange for Payment of Salaries, Pensions and Gratuities begins with the statement that "The regulations in this section with the exception of 1440 (11), apply, mutatis mutandis, to payment of pensions. This edition of the Financial Regulations of 1947 does not contain regulation 1984 (11) (c) either in Part I or Part II. Part I of the 1947 edition of the Financial Regulations ends with regulations 1040 while Part II commences with regulation 1100. The obvious conclusion is that the intervening regulations have been deleted. As far as the regulations dealing with the rates of exchange for payment of salaries and pensions are concerned, of which 1084 (11) (c) formerly formed part are

now replaced by regulations 1440, 1441 and 1442. These new regulations continue to remain in force after the Establishment Code came into operation in 1971, by virtue of the saving clause in Appendix 26 to the Establishment Code ”.

With the deletion of Regulation 1084 (11) (c), learned Queen’s Counsel’s submission that the *local Bank’s buying rate of exchange* is determined by the Central Bank under the Monetary (Amendment) Law No. 16 of 1977 section 76 A must fail. In any event, in my view, the Monetary (Amendment) Law relates to the rates at which the Central Bank may buy and sell spot foreign exchange and has no application to the payment of pensions.

Regulation 1440 refers to sterling salaries and provides that “ (1) An officer will be paid at the rate of £1 = Rs. 15/- in respect of periods spent by him in Ceylon and India, including journeys between these countries . . . This regulation falls within Chapter XVI which deals with Leave and Passages and clearly applies to Sterling officers on leave. It is the same with Regulation 1441 which in addition deals with Rupee salaries (and pensions) and is not applicable to the present case where the appellant is paid a sterling pension.

The only regulation that is applicable is 1442 which refers to *Rates of Exchange for Payment of Gratuities under the Pension Minutes*. It applies, mutatis mutandis, to payment of pensions. Indeed learned Queen’s Counsel for the appellant conceded that the payment of pensions would come under this regulation.

This regulation reads as follows:— “ Gratuities under the Pension Minute expressed in sterling will be paid Rs. 15/- = £1, if the gratuitant is in Ceylon or India on the date on which payment falls due . . . For the purpose of this regulation the date on which payment falls due is . . . the date of retirement in the case of all other gratuities ”.

The appellant retired from the post of Professor of Mathematics on 15.10.40. That would then be the date on which his pension fell due and since he is a Sri Lankan and continued

to remain in the Island on retirement, the rate of payment of his sterling pension under this regulation is Rs. 15/- to a £ sterling. Indeed it is the very rate of exchange specified in his letter of appointment (P1) and Eastern No. 74 (P1A). It was at this rate that his pension had been paid from the date of his retirement and he is not entitled to anything more than what he has already been paid. The Monetary (Amendment) Law No. 16 of 1977 as stated earlier, has no application at all to the question of the rate of exchange in regard to the payment of pensions.

Learned Queen's Counsel for the appellant also sought to rely on section 7 of the Minute on the Ceylon Civil Service, which is reproduced in the Ceylon Civil List of 1958 at page 589. That section reads as follows:

“ Salaries will be paid to those on sterling salary scales in rupees at a rate of exchange periodically fixed and proclaimed. Leave pay and pension will be calculated according to the sterling salaries fixed by this Minute ”.

This Minute is clearly inapplicable to the appellant. It refers to officers in the Ceylon Civil Service, whereas the appellant was appointed as Professor of Mathematics at the University College and at the time, did not belong to the Ceylon Civil Service. He therefore cannot avail himself of section 7 of the Ceylon Civil Service Minute.

I am of the opinion that the learned District Judge was right in holding that Financial Regulation 1084 (11) (c) is inapplicable to this case and that the Monetary (Amendment) Law No. 16 of 1977 has also no application to the payment of pensions.

Although it may appear at first sight, that a glaring injustice has been caused to the petitioner in being paid his pension at the rate of Rs. 15/- to a £ Sterling, when in 1977 by the Monetary (Amendment) Law the Bank's buying rate of spot

exchange of sterling was fixed in the region of about Rs. 35/- to a £ Sterling, one cannot lose sight of the fact that the petitioner has benefited to some extent by being paid his salary and pension from the date of his first appointment in 1922, for about 55 years, at the rate of Rs. 15/- to a £ Sterling when the actual rate of exchange at the time was only Rs. 13/33 to a £ Sterling.

I accordingly dismiss the appeal, but in view of the circumstances of this case I order no costs both here and in the Court below.

B. E. DE SILVA, J. — I agree.

Appeal dismissed.