

PERERA
v.
SRI LANKA INSURANCE CORPORATION AND OTHERS

SUPREME COURT.
PERERA, J.,
GUNAWARDANA, J.,
GUNASEKERA, J.
S.C. NO. 553/97 (FR).
JANUARY 26, 1999.

Fundamental Rights – Constitution, Article 12 (1) – Time limit – Conformity with Article 126 (ii) of the Constitution.

On 13.7.1996 the petitioner's office had been sealed. Thereafter, on 15.7.96 he was sent on compulsory leave. The petitioner was informed of this decision by letter of 25.7.1996 received by him on 1.8.1996. The application under Article 126 was filed on 11.7.1997. On the preliminary objection to the maintainability of the application on the ground that it has been filed out of time, it was contended that keeping of the petitioner on compulsory leave from July, 1996 and the failure to revoke that order constituted a continuing violation of Article 12 (1).

Held:

It is manifestly clear that the complaint of the alleged violation of Article 12 (1) was based on the act of the respondent placing the petitioner on compulsory leave, and the present petition has been filed on 11.7.97, after the lapse of one year from the date of the alleged violation.

S. L. Gunasekera with M. de Silva for petitioner.

S. A. Parathalingam, PC with Faiz Musthapha for 1st to 6th & 8th to 10th respondents.

R. K. S. Sureshchandra for 7th respondent.

M. C. Jayaratne with E. L. Tirimanne for 11th to 13th respondents.

April 27, 1999.

PERERA, J.

The petitioner in this case has complained to this Court that on the 13th of July, 1996, whilst the petitioner was in his office at the Sri Lanka Insurance Corporation, the 11th, 12th and 13th respondents together with the Secretary of the Sri Lanka Nidahas Sevaka Sangamaya of the Sri Lanka Insurance Corporation and certain other minor employees had forcibly entered his office and informed the petitioner that they had to seal his office on the instructions of the 1st respondent. Thereafter, the Board of Directors of the 1st respondent Corporation on the 15th of July, 1996, had taken the decision to place the petitioner on compulsory leave. The petitioner was informed of this decision by letter dated the 25th of July, 1996, which was received by him on the 1st of August, 1996.

The petitioner states further that the respondents have acted *mala fide, inter alia*, for the following reasons:

- (1) The petitioner was sent on compulsory leave at the request of a political organization and/or trade union.
- (2) The respondents had failed to reinstate the petitioner even though the Hon. Attorney-General had advised that there was no material to hold an inquiry against the petitioner.
- (3) The respondents have not reinstated the petitioner nor have they taken any action against him for the last 1 year.

In the above circumstances, the petitioner has prayed for a declaration that the petitioner's fundamental rights in terms of Article 12 (1) of the Constitution have been infringed by the respondents and to direct the 1st respondent Corporation to *cancel the order placing the petitioner on compulsory leave*. The petitioner has filed his petition in the Supreme Court on the 11th day of July, 1997. Counsel for the 1st to the 6th and 8th, 9th and 10th respondents Mr. Parathalingam

raised a preliminary objection to the maintainability of the present application on the ground that this petition has been filed out of time and should, therefore, be dismissed in terms of Article 126 (ii) of the Constitution. Counsel for the 7th respondent and counsel for the 11th, 12th and 13th respondents associated themselves with this submission and moved that the petitioner's application be dismissed. Mr. Parathalingam urged that the entire case of the petitioner in regard to the alleged violation of his fundamental rights under Article 12 (1) of the Constitution, was based on paragraph (c) of the prayer to his petition, which reads thus:

"Direct the 1st to the 10th respondents to cancel the order placing the petitioner on compulsory leave."

Counsel submitted that according to paragraph (10) of the petition, the petitioner was sent on compulsory leave, with effect from the 25th of July, 1996 (vide P11). As stated earlier, the petition to this Court was filed on the 11th of July, 1997. Hence, the petitioner's application has not been filed in conformity with the provisions of Article 126 (ii) of the Constitution, and therefore cannot be maintained.

Counsel for the petitioner, however, contended that keeping of the petitioner on compulsory leave from July, 1996 and the failure to revoke the order placing him on compulsory leave constituted a continuing violation of his aforesaid fundamental rights, and that in the said circumstances, his application for relief was not time-barred.

Counsel also submitted that the petitioner was never informed of the results of the interview held for the selection of an Additional General Manager (Investments). He first became aware that he had not been selected for the above post only when the 1st respondent Corporation advertised the said post for the second time in June, 1997. The petitioner at this stage made the present application for relief on the 11th of July, 1997, within 1 month of the said date. It was his submission that in the aforesaid circumstances the petitioner's application for relief in respect of the said matter is not time-barred and is in conformity with the provisions of Article 126 (ii) of the Constitution.

I have examined carefully the petition filed by the petitioner in the present case and the prayer to the petition. It is manifestly clear that the complaint of the petitioner of the alleged violation of his fundamental rights guaranteed by Article 12 (1) of the Constitution was based on the act of the respondent placing the petitioner on compulsory leave (vide para. (c) of the prayer to the petition).

According to the petitioner, the Board of Directors of the 1st respondent had taken a decision to place him on compulsory leave on the 15th of July, 1996. The petitioner was informed of this decision by letter dated 25th July, 1996, which was received by him on the 1st of August, 1996 (vide P11). The present petition to this Court has been filed on the 11th of July, 1997, after the lapse of one year from the date of the alleged violation.

Having regard to the facts and circumstances of this case, I am unable to agree with the submission of counsel for the petitioner that placing the petitioner on compulsory leave in July, 1996 and the failure to revoke such order constitutes a continued violation of the petitioner's fundamental rights guaranteed by Article 12 (1) of the Constitution.

I have also considered the cases cited by Counsel for the petitioner in support of the principle that inaction in circumstances where there is a duty to act would constitute an infringement by executive administrative action under Article 126 of the Constitution. I am of the view that the cases cited by petitioner's counsel are not strictly applicable to the facts of this case.

I, therefore, uphold the preliminary objection raised by counsel for the respondents that this petition is out of time and should, therefore, be dismissed in terms of Article 126 (2) of the Constitution. The present petition is accordingly dismissed, but without costs.

GUNAWARDANA, J. – I agree.

GUNASEKARA, J. – I agree.

Application dismissed.