

AUGUSTINE PERERA AND OTHERS
v.
RICHARD PATHIRANA, MINISTER OF EDUCATION AND
OTHERS

SUPREME COURT
FERNANDO, J.
GUNASEKERA, J., AND
WEERASURIYA, J.
SC (FR) No. 453/97
WITH SC (FR) Nos, 454/97, 390/99 AND 362/99
11TH DECEMBER, 2002

Fundamental Rights - Salary scales of school principals and teachers-Discriminatory differential in favour of teachers – Article 12 (1) of the Constitution - responsibility of the executive to Parliament – Articles 42 and 43 of the Constitution – Whether judicial review of executive decisions is excluded by those Articles.

Prior to 1995 the salary scales for principals of schools were higher than those of the teachers. However, with effect from 1.1.95 new scales of teacher's salaries which were very much higher than those of principals were adopted. upon the establishment of the Sri Lanka Teachers Service ("SLTS")

The anomaly created on 1.1.95 continued until 31.12.96. The differential in favour of teachers, which prevailed between 1.1.95 and 31.12.96 was eliminated, prospectively, and a small differential in favour of principals was restored by a salary revision, but only from 1.1.97 and the principals who had

retired before 1.1.97 demanded that their pensions and retiral benefits be computed on the new scales.

Held:

1. There was no rational basis for the failure to remedy the anomaly for the period 1.1.95 to 31.12.96 (in respect of both serving and retired principals) and that was an infringement of Article 12 (1).
2. The fact that the President under Article 42 and the Cabinet under Article 43 are responsible to Parliament does not in any way exclude judicial review under the Constitution of all executive decisions including those relating to "policy"

APPLICATION for relief for infringements of fundamental rights.

Cases referred to:

1. *Kanagamoorthy v De Silva* SC 352/99 SCM
12.11.2002
2. *Jayasinghe v Wickremanayake* S.C. 770/97 SCM
22.11.2000
3. *Ramupillai v Perera* (1991) 1 Sri LR 11

Sanjeewa Jayawardena with Priyanthi Gunaratne for petitioners in 453/97, 454/97 and 390/99

Upul Jayasuriya for petitioners in 362/99

Harsha Fernando, State Counsel for respondents

Cur. adv. vult.

January 30, 2003

FERNANDO, J.

These four applications were taken up together as the same question was involved.

The All Ceylon Principals' Service Union was the Petitioner in SC (FR) Application No 454/97 as well as the 1st Petitioner in SC (FR) Application No 390/99. The Secretary of that Union was the

Petitioner in SC (FR) Application No. 453/97 and also the 2nd Petitioner in SC (FR) Application No. 390/99. SC (FR) Application No 362/99 was filed by 75 Principals who had retired between 6.10.94 and 31.12.96.

The Petitioners stated that for many years prior to 1995 the salary scales of Principals of school - who were in the Sri Lanka Principal's Service ("SLPS") - were generally higher than those of Teachers; that the Sri Lanka Teachers' Service ("SLTS") was established with effect from 6.10.94; that new salary scales were laid down for Teachers, which were considerably higher than those of Principals; and that although it was admitted and acknowledged that this was an anomaly it was not remedied until new salary scales were approved by the Cabinet of Ministers on 24.2.99 effective 1.1.97. They complain that the failure to make those salary scales retrospective to 1.1.95 was in violation of their fundamental rights under Article 12 (1)

The Respondents averred that certain categories of Teachers had enjoyed higher salaries than Principals Grade III even before the SLTS was established. However they did not claim that any Teachers were paid more than Principals Grade I or II. To that extent at least there is no doubt that Principals did enjoy a favourable salary differential *vis-a-vis* Teachers before 1.1.95.

The Petitioner's grievance is apparent upon a comparison of the respective salary scales prior to 1.1.95 and after 1.1.97. The Principals' salary scales as at 24.12.92 (as amended on 8.3.93) were.

Grade I	45,120-6x1200,3x1560-57,000
Grade II	42,720-6x1200,1x1560-53,880
Grade III	37,200-4x780,9x1200-51,120

The Teachers' new salary scales, effective 1.1.95, were:

Class 1	105,000-10x4800-153,000
Class 2-I	80,400-7x3000-101,400
Class 2-II	53,880-15x1560-77,280
Class 3-I	42,720-12x1200 - 57,120
Class 3-II	32,520-10x780,2x1200-42,720

Thus the salary differential in favour of Principals was not merely eliminated but reversed, very drastically. A Principal Grade I was placed on a much lower scale than a Teacher Class 2-II. Nevertheless no attempt was made to revise the salary scales of Principals at the same time.

The Petitioners submit that the legitimacy of their grievance was throughout accepted. Thus in a Cabinet Memorandum dated 27.2.1996 the 1st Respondent, the Minister of Education, referred to the new salary scales of Teachers, and stated:

“.....It was intended to re-structure the [SLPS] to provide for the revision of the [SLPS] salary scales.... However, *since this has been referred to the National Salaries Commission, this Ministry has not been able to take action to re-structure the [SLPS].* As a result the Principals are paid *much less* than the Teachers. The position prevailing earlier was that the *Principals entrusted with management of schools were paid a higher salary than... Teachers. To remedy this anomaly* it is recommended to pay the salary scales of the [SLTS] to the Principals of Schools *pending the re-structuring of the [SLPS]*” [emphasis added]

On 28.2.1996 the Cabinet approved the implementation of the 1st Respondent’s proposal with effect from 1.1.95, but decided that to meet the additional expenditure the Ministry should utilize the savings under other Heads, and did not agree to a supplementary Estimate being presented due to budgetary constraints.

It is thus clear that the Cabinet agreed even then that granting higher salary scales to Principals (*vis-a-vis* Teachers) was justified, that granting higher salary scales to Teachers was therefore an “anomaly”, that this anomaly should be removed upon the restructuring of the SLPS, and that pending such restructuring, Principals should be placed on the same salary scales as Teachers.

Thereafter Public Administration Circular No 2/97 dated 15.1.97 prescribed new salary scales (effective 1.1.97) for Principals and Teachers:

Principals			Teachers
Class 1	T-16-6	123,480-10x5520-178,680	Class 1T-16-5
Class 2-I	T-16-5	117,960-10x5520-173,160	Class 2-I T-16-4
Class 2-II	T-16-4	90,420-7x3000-111,420	Class 2-II T-16-3
Class3	T-16-3	67,320-12x2460-96,840	Class 3-I T-16-2
		55,140-9x1320,8x1560-79,500	Class 3- II T-16-1
		45,900-14x1320,6x1560-73,740	

However, that Circular was immediately followed by a letter dated 13.2.97 from the 5th Respondent, the Director-General of Establishments, stating that Principals Grade I and II would all be placed on the scale T-16-4 until the SLPS was restructured. Thus Principals Class I were again placed lower than Teachers Class I.

The 1st Respondent then submitted a Cabinet Memorandum dated 23.2.99 seeking approval:

to place Principals Grade I and II (equivalent to Principals Class I and 2 on the Scale 105,000-153,000, and Principals Grade III on the scale 80,400 (-101,400), to convert "the salary in terms of Chapter VII of the Establishments Code and to place all officers at the initial of the respective salary scale", and to make payment in terms of those salary scales with effect from 1.1.95, the arrears for 1.1.95 to 31.12.96 being payable in 36 instalments;

to revise the pensions paid to Principals who retired between 6.10.94 and 31.12.96 in terms of the aforesaid salary scales; and

to approve the draft Minute of the SLPS with effect from 1.1.97 and to convert the salaries of the Principals in terms of Circular No 2/97 for the period after 1.1.97.

The Cabinet approved those proposals on 24.2.99.

Thus the differential in favour of Teachers, which prevailed between 1.1.95 and 31.12.96 was eliminated, prospectively, and a small differential in favour of Principals was restored, but only from 1.1.97. In response to a specific question, learned Counsel for the Petitioners stated that the Principals do not question the salary scales, the adequacy of the differential, and the manner in which payments were made, but only urged that the new scales should have

been made retrospective to 1.1.95, and claimed arrears on that basis. Learned Counsel who appeared for the Principals who had retired before 1.1.97 contended that their pensions and retiral benefits should be computed on the new scales.

Since the Petitioners did not contest the salary differential embodied in Circular 2/97 and the Cabinet decision of 24.2.99, it follows that they accepted a salary structure in which (a) Principals of the highest Class (or Grade) enjoy a salary scale higher than all Teachers, (b) Principals of the second highest Class have the same salary scale as Teachers of the highest Class, (c) Principals of the third highest Class have the same salary scale as Teachers of the second highest Class, and so on. In regard to (a), the differential was equivalent to one increment on the salary scale T-16-5, namely Rs 5,520 p.a.

In consequence of the Cabinet decisions of 24.2.99, conditions (b) and (c) above were satisfied for the period 1.1.95 to 31.12.96. In regard to condition (a) the position was that a differential was recognized for the period *before* 1.1.95 and for the period *after* 1.1.97- but not for the period 1.1.95 to 31.12.96. The Cabinet decision of 28.2.96 shows that the Cabinet refrained from fully remedying the anomaly only because restructuring was pending, and equalized salaries as a temporary measure. The subsequent Cabinet decision and the affidavits filed on behalf of the Respondents disclose no rational basis for the failure to remedy the anomaly for the period 1.1.95 to 31.12.96, and that was an infringement of Article 12 (1).

Learned State Counsel made several submissions which the Respondents had not urged in their pleadings (and, indeed, inconsistent with those pleadings): that the SLPS and the SLTS were separate structures (citing *Kanagamoorthy v de Silva*⁽¹⁾) and that accordingly there was no need to compare the salary scales of the SLTS when determining those of the SLPS; that the decision of the Cabinet not to grant a salary differential to Principals Class 1 was a "policy" decision which this Court could not and/or should not review, as the remedy lay in the hands of Parliament" because the Cabinet was "collectively responsible and answerable to Parliament" under Article 42; and finally that the circumstances which justified a salary differential before 1.1.95 may not have existed after 1.1.95.

In *Kanagamoorthy v de Silva*, (*supra*) a complaint by members of the Sri Lanka Education Administrative Service ("SLEAS") as to the adequacy of the differential between their salary scales and those of the SLPS, was rejected on the basis that;

"... these two services are being treated as two different services since the salary restructuring in 1995. The salary structure of the SLTS further confirms the fact that each service now is not a promotional grade of the other, but has a different status and standing in its own in the hierarchy of the Education and Educational Administration of the country...

...It is not disputed that there are three separate services in the Education sector, which comprises of Teachers, Principals and Education Administrators... each service is a separate entity governed by a Service Minute with its own salary structure...."

I do not agree that the mere fact that the SLPS and SLTS are different services precludes comparison of salary scales and the grant (or the maintenance) of a salary differential were justified. Dealing with the determination of the comparative salary scales of over a dozen different services in the Health sector, this Court held in *Jayasinghe v Wickremanayake*⁽²⁾:

"It appears that the ministerial sub-committee has not given its careful consideration to the classification of these para medical officers who were recruited from a common examination to different categories of service. Accordingly *it is obvious that the job contents, level of responsibility, knowledge, skills and aptitude must be given due consideration in determining the different categories as well as their salary scales.*"

It is not only legitimate but sometimes essential to compare the salary scales of different services in order to determine salary scales (having regard to the required qualifications, knowledge, experience, skills, functions, responsibilities, etc) and salary differentials. Besides, it is clear that the Minister of Education and the Cabinet of Ministers did recognize that, having regard to the role and responsibilities of the Principal of a school, a salary differential was justified. That had been recognized before 1.1.95, and there is no basis for learned State Counsel's speculation that the circumstances after

1.1.95, might have been different to those before. Since there was no rational basis for refusing such recognition only for the period 1.1.95 to 31.12.96, such recognition must extend to that period as well.

Finally, it is no doubt true that the Executive-the President under Article 42, and the Cabinet as a whole under Article 43-is responsible to Parliament. However, those provisions do not mean that Parliament is the only institution empowered to review executive decisions, and do not in any way exclude judicial review, under and in terms of the Constitution, of all executive decisions, including those relating to "policy" (as for instance in *Ramupillai v Perera* (3)), particularly on the ground of infringement of fundamental rights. In any event, the decision impugned in this case-that the new salary scales of Principals Class I should not be retrospective - is an *ad hoc* decision, and by no stretch of the imagination a matter of "policy"

There remain two aspects where there is some uncertainty. One is the *basis* of conversion to the 1.1.95 and 1.1.97 scales, and the other is the *date* of conversion. In those respects Principals should not be treated less favourably than Teachers.

I hold that the Petitioners have established an infringement of their fundamental rights under Article 12 (1), and that Principals in Grade (or Class) I must be allowed a salary differential equivalent to one increment on the salary scale of Teachers Class 1, and placed on the salary scale 109,800- 10x4800-157,800 for the period 1.1.95 to 31.12.96. Principals who retired between 6.10.94 and 31.12.96 shall also be entitled to have their pensions and retiral benefits calculated on the basis of those salary scales. Principals shall be placed on the 1995 and 1997 scales in terms of the applicable provisions of the Establishments Code, but on a basis not less favourable than that adopted in the case of Teachers, and on the same dates as for Teachers. If there is any doubt or difficulty, the parties may apply to this Court. The State shall pay the Petitioners in each case a sum of Rs. 25,000 as costs, i.e. Rs 100,000 in all, before 31.3.2003.

GUNASEKERA, J. - I agree.

WEERASURIYA, J. - I agree.

Relief granted.