

THE INSURANCE CORPORATION OF SRI LANKA

v.

A. F. DABARE

SUPREME COURT

WEERARATNE, J., SHARVANANDA, J. AND WIMALARATNE, J.

S. C. 43/80 - C. A. 32/76

L.T. NO.1/ADDL./1144/76

FEBRUARY 12, 1981.

Termination of employment—Extension of employment after 55 years—Public Administration Circular 95 of 4.4.1975—Can unsigned notes of a meeting with the Minister and representatives of the Executive Officers' Association be regarded as part of contractual agreement?

According to Circular No. 95 of 4.4.1975 a State officer who reaches 55 years may be granted annual extensions of service up to the age of 58 years provided retention of his services is essential for the working of the Department by reason of the officer's special training, skill or qualifications or for the completion of a task already allocated to him. The contents of the notes of a meeting by the Minister with the Executive Officers' Association of the Insurance Corporation whereby officers who were over 40 years, as the applicant was, at the time of recruitment would be allowed the concession of continuing till 60 years cannot be regarded as a contractual term. Hence the retirement of the applicant before he was 60 years of age was valid.

Appeal from judgment of Court of Appeal

Mark Fernando for the Appellant

Lyn Weerasekera with Messrs. Mano Devasagayam for the Respondent.

Cur adv vult

March 10, 1981

WEERARATNE, J.

The question that arises for determination in this appeal is whether the Respondent's employment in the Insurance Corporation of Sri Lanka, hereinafter referred to as the Corporation, could be terminated at the age of 55 years or at the age of 60 years.

The Respondent commenced employment at the age of 42 years. On the 11th December, 1976, his services were terminated, at which time he was 57 years of age. His complaint, in an application made to the Labour Tribunal was that his services were wrongfully terminated and he prayed for an order of re-instatement and/or compensation in lieu of re-instatement, and for gratuity.

The Corporation in its answer averred that the Respondent was not given an extension under the Public Administration Circular No: 95, dated 4th April 1975, marked (R1) and that consequently his termination was justified.

At the Inquiry there was no evidence led. Written submissions and documents were given by agreement of the parties. The Court of Appeal agreed with the decision of the President of the Labour Tribunal which awarded compensation for 35 months in the sum of Rs. 70,000/- with costs, on the basis of his terminal salary of Rs. 2,000/- per mensem. In the appeal before this Court, Mr. Mark Fernando, learned Counsel for the Corporation, submitted that he was relying on paragraph 6 of the Respondent's letter of appointment marked (A):

"6.

You will be subject to the rules, regulations and orders which may be issued by the Corporation from time to time."

Counsel drew our attention to an Establishment Department Circular (R2), No: 16 dated 31st August, 1964, which set out the retirement age of Corporation employees to be 55 years, but that annual extensions up to 60 years of age would be considered at the request of the employee. Counsel further referred us to Circular (R3), paragraph 2 by which notice is required to be given to the General Manager in respect of a request for an extension, at least 3 months before the age of optional retirement is reached. Circular No: 333, dated 10th June, 1974 (R4), sets out that, "annual extensions up to the age of 58 will be considered only in special cases, on the recommendations of the Corporation, by the Cabinet with the approval of the Ministry." Paragraph 2 requires the employees to apply through the Head of Division Department/Branch Manager, at least 6 months prior to reaching 55 years. Mr. Mark Fernando then referred us to the last of the series of Circulars on this subject, namely Public Administration Ministry Circular No: 95 dated 4th April, 1975, (R1) under the heading, "State Officers and other Public Sector Officers" which sets out that there have been a series of decisions which have been finally embodied in this Circular. It states:

"2.

... a State Officer who reaches the age of 55 years may be granted annual extensions of service up to the age of 58 years if the Minister in charge of the Department concerned is of the view that his retention in service is essential for the working of the Department by reason of the officer's special training, skill or qualifications, or for the completion of a task already allocated to him."

"3.

Extensions beyond the age of 58 would be granted only upon a reference by the Minister concerned."

Finally, the circular states that, "The same conditions as will apply to state officers will apply to Corporations. . . . except where the law or a contractual obligation requires otherwise."

In terms of the above Circulars, the Respondent sought three applications for extension—two of which were granted—until he reached the age of 56 years. The third application was refused by the Board which decided with the concurrence of the Minister that his services should not be extended beyond the age of 57 years. Mr. Fernando submitted that there was no contractual obligation to keep the Respondent in service until he was 60 years. He stated that this case was fought on the basis that the Public Administration Circulars, which made the Respondent subject to the rules, regulations and orders issued by the Corporation were applicable.

Counsel stated that the Minister can legally direct the Corporation by general or special direction under Section 8 of the Insurance Corporation Act No: 2 of 1961 and that so far as the Corporation is concerned, there must be a variation of the relevant Circular. In this instance there was no such direction given by the Minister or variation by the Corporation. The Corporation officers protested against these Circulars which dealt with the retirement age at 55 years. Then by Circular (A6) dated 3rd February, 1971, the Cabinet agreed *inter alia* that all employees of Corporations "should be permitted to continue in service till they reached 60 years of age". However, despite (A6), Circular (A7) dated 23rd July, 1971, in

the paragraph dealing with Corporations, set out that those who have passed the age of 55 years are permitted to continue in service until they reach the age of 60 years, subject to the general rules and regulations governing extensions of service in Corporations. Mr. Fernando submitted that the operative Circular governing this matter is (R4) dated 10th June, 1974. The Respondent, at the date of this Circular had reached the age of 55 years. He has therefore to apply for extension in terms of paragraph 2 of the Circular (R1), dated 4th April 1975, which application would be considered by the Ministry on the recommendation of the Corporation. As mentioned earlier Counsel's position was that this case has been fought on the basis that the Public Administration Circulars are applicable and govern this matter, as would be seen from clause 6 of the Respondent's letter of Appointment (A1) from which it is apparent that the Respondent agreed to be bound by the regulations.

The Respondent was retired by the Corporation on 7th May, 1976, (A8). By his letter (A9) dated 30th April, 1976, he claimed that in terms of the rules prevailing at the time of employment, and in accordance with the terms and conditions of his employment he was entitled to serve until he was 60 years of age, and that despite this he was retired at 57 years without valid reasons. The Corporation, by its letter (A10) in reply drew the Respondent's attention to the Manual of Procedure paragraph 10.

In his order, the President of the Labour Tribunal referred to the document (A2) dated 3rd March, 1968, which bears the heading, "Notes of a Meeting that the Hon. Minister had with Representatives of the Executive Officers' Association of the I.C.C." At this meeting the Minister, General Manager and Chairman of the Insurance Corporation, as well as employees were present. The decision taken at this meeting which is relevant to this matter reads as follows:

"However, in the case of officers recruited to the Corporation from the private sector whose ages were over 40 years at the time of the recruitment, would be allowed the concession of continuing till 60 years with the option of the officers to retire at any time after 5 years, subject to the proviso that the Board could initiate action to retire officers at whatever age in the case of inefficiency."

The President of the Tribunal, in accepting the contention made on behalf of the Respondent stated that when the decision in (A2) was taken the Respondent was 49 years of age and that consequently such decision became a term of his employment with the Corporation. The order of the President makes a reference to Circular (R1) No: 95 dated 4th April, 1975 which was relied upon by the Employer and which provides that an officer may be required to retire on completing the age of 55 years, but he may be granted annual extensions up to the age of 58 years and even 60 years in certain circumstances. Reference was also made to Section C which sets out that the same conditions would apply to employees" except where the law or a contractual obligation requires otherwise . . ." The President concludes that the exception just referred to envisages a workman, in a case such as this, having regard to the agreement in the document (A2) referred to earlier. The President further held that the Circular (R1) did not apply to the Respondent, and that he was entitled to be employed until he was 60 years of age.

The learned Judges of the Court of Appeal were in complete accord with the reasons given by the President of the Labour Tribunal, and in their judgment, incorporated the very language used by him in arriving at a finding that the document (A2) constituted a term of the Respondent's employment and that Respondent was not a workman to whom the conditions in Circular No: 95 (R1) applied.

Counsel for the Corporation submitted that the President of the Labour Tribunal has not considered the question of a contractual agreement, and that in any event he cannot conclude that the notes of the Minutes of the conference (A2), constituted a contractual agreement. He submitted that there was neither a contractual agreement nor a "fixed time contract," as contemplated in Circular (A3). It was further submitted that the learned Judges of the Court of Appeal have merely considered the finding of the President of the Labour Tribunal and not other evidence in the case.

Mr. Lyn Weerasekera, learned Counsel for the Respondent submitted that the Circulars A3 and A4 (referred to by him in some detail earlier), were contrary to the terms of the Conference, the minutes of which are set out in the document (A2) referred to earlier. Then, when the Corporation employees submitted a memorandum (A5) to the Minister of Trade expressing the hardships caused to them if they were compulsorily retired at the age of 55 years, a Cabinet Decision (A6) was arrived at on 3rd February, 1971, to the effect that all employees in Public Sector Corporations should be permitted to continue in service till they reach 60 years. Counsel for the Respondent, relying on the Cabinet Deci-

sion, submitted that consequently there was a reasonable and legitimate expectation that retirement at the age of 60 years was a term of the Respondent's employment. Counsel for the Corporation however countered this when he submitted that a Cabinet decision is ineffective unless it is implemented by, for instance, a resolution in Parliament

Counsel for the Corporation in his reply stated that he was not confining his case to the Public Administration Circulars. He set out the grounds on which he further relied, *inter alia* on the final Circular (R4) adverted to earlier and the Public Administration Circular No: 95 (R1).

The question we are called upon to decide is, whether the Notes of the Minutes of the Meeting attended by the Minister, Chairman and Representatives of the Executive Officers' Association of the Corporation held on 3rd March, 1968 marked (A2), constitutes a "contractual obligation" within the meaning of the words, ". . . except where the law or a contractual obligation required otherwise," as appears in paragraph 4C in the document (R1) dated 4th April, 1975 issued by the Ministry of Public Administration. As shown earlier in the judgment the President of the Labour Tribunal in his order concludes in the manner of an "*ipse dixit*", that the Notes P2 (in the portion dealing with the retiring age) constituted a "contractual agreement" between the Minister and the Respondent, with no analysis or discussion leading to his conclusion. The judgment of the Court of Appeal merely reiterates that finding.

The document (A2) still retains its informality as a note of a meeting with the Minister. There is nothing to indicate that the notes were approved or incorporated in a Circular or acted upon. The Ministry has made no subsequent ratification of the notes. There is even nothing to indicate as to who recorded those notes, which bear no signature or initial. In these circumstances we find ourselves unable to accept what appears to be an informal note in regard to which there is not the slightest evidence to indicate that it was acted upon by the relevant authorities. If these notes were acceptable to the authorities we would certainly have expected to find a Circular bearing on it.

In this view of the matter, the very foundation of the findings of the President of the Labour Tribunal and the Court of Appeal appear to us to be unsound.

The Respondent was subject to the rules and regulations made by the Corporation. The rules embodied in the final Public Administration Circular No: 95 (R1) dated 4th April 1975 issued by the Ministry of Public Administration would enable the Respondent to obtain annual extensions up to the age of 58 years, if the Minister in charge of the department concerned is of the view that his retention in service is essential for the working of the department” The Respondent’s application for an extension when he reached the age of 56 years was refused by the Board, which decided with the concurrence of the Minister that his services should not be extended beyond the age of 57 years. In this view of the matter the orders made by the President of the Tribunal and the Court of Appeal, which concurred with the order of the President cannot stand.

I accordingly set aside the order that the services of the Respondent have been unjustly terminated as well as the award of Rs. 70,000/- compensation made by the President of the Tribunal and confirmed by the Court of Appeal.

In regard to the relief prayed for, I have given anxious consideration and taken the view that the Respondent was led to believe that he could continue in employment until the age of 60 years, as a result of the assurances which were given to the Corporation employees at the Conference attended by the Minister and representatives of the Executive Officers’ Association of the Corporation, the notes of which were recorded in the document (A2). I have earlier referred in some detail to the justifiable criticism that could be made in regard to the Notes of that Conference and shown that there was apparently no consequential action taken to give validity to the decisions set out in the said notes.

The Respondent has been awarded a sum of Rs. 70,000/- as compensation for what the President of the Tribunal has described as the unjust termination of his services, a finding with which we do not agree. However, in all the circumstances of this case and having regard to the reasons given, we deem it just to award compensation in a sum of Rs. 12,000/- to the Respondent.

I accordingly allow this Appeal and set aside the Judgment of the Court of Appeal which affirmed the order of the President of the Tribunal and for the reasons given direct that a sum of Rs. 12,000/- be paid to the Respondent. We make no order as to costs.

Sharvananda, J. — I agree
Wimalaratne, J. — I agree

Appeal allowed