

JINADASA
v.
ASSOCIATED NEWSPAPERS OF
CEYLON LTD.

SUPREME COURT
AMERASINGHE, J.,
PERERA, J.,
BANDARANAYAKE, J.
S.C. FR NO. 296/98
OCTOBER 27, 1998.
NOVEMBER 12, 1998.

Fundamental rights – Article 12 (1) – Services terminated – Lost trust and confidence – no rational explanation.

The petitioner was appointed Additional Secretary with effect from 03. 05. 1988 and upon the retirement of the Secretary he was appointed Acting Secretary and Secretary in 1989. On 18. 08. 1995 he was appointed as 'General Manager'. On 31. 03. 97 he was placed in the Special Grade, and his salary had been increased with effect from 01. 01. 1998. However, on 06. 04. 1998, his services – as the secretary – were terminated on the alleged ground that the Board had lost trust and confidence in the petitioner.

Held:

1. Evidence does not show any reason to conclude that the decision by the Board on 06. 04. 1998 was warranted. On the other hand there were letters produced in evidence that his work was commended by the present Chairman and the former Chairman.
2. The grounds for the action of the respondents cannot be regarded as the justification for the respondents decision for they took place before the increase of the petitioner's salary on 01. 01. 1998. Past charges were either mistaken or lapses forgiven and therefore they were irrelevant when the respondent decided to terminate the petitioner's services.

Per Amerasinghe, J.

"The decision to terminate the petitioner's services was in my view therefore purely dependent on the will and pleasure of the 1st respondent and capricious and not restrained by considerations of impartial even-handed dealing."

APPLICATION under Article 126 of the Constitution.

Romesh de Silva, PC, with Palitha Kumarasinghe and Sugath Caldera for petitioner.

E. D. Wickremanayake with R. A. L. Kumarawickrema for 1st-7th respondents.

Cur. adv. vult.

February 3, 1999.

AMERASINGHE, J.

The first respondent is the Associated Newspapers of Ceylon Ltd. Although in their statement of objections the respondents submitted that the first respondent was "not a 'State instrument' whose actions constitute executive or administrative action within the meaning of Article 126 of the Constitution", learned counsel for the respondents stated that he was not taking up that objection and would rest his case on the facts relating to the alleged discrimination which were claimed by the petitioner to have violated his fundamental rights guaranteed by Articles 12 and 14 (1) (g) of the Constitution.

The secretary of the first respondent, was on extended service and on his way out. His post had to be filled, and when it was advertised, the petitioner was appointed Additional Secretary with effect from 03 May, 1988. Upon the retirement of the Secretary, the petitioner was appointed Acting Secretary and Secretary in 1989. In their statement of objections, the respondents stated: "the petitioner was selected for employment by the 1st respondent because he was the only candidate who turned up for the interview. He was recruited not on his merits but because the 1st respondent had no other choice".

The petitioner had a Bachelor's Degree in Economics (Special) from the University of Ceylon; he was an Attorney-at-law; a registered company secretary under the Companies Act; the holder of a Master's Degree in International Relations from the University of Colombo and a Certificate in Diplomatic Training from the Bandaranaike Institute of Diplomatic Training; and he had been an external consultant in Management for the National Institute of Business Management, Manager/Legal at the State Trading Corporation, Company Secretary/

Legal Advisor, St. Anthony's Group of Companies. His work as Assistant Secretary of the Sri Lanka National Salt Corporation had been highly commended by the Chairman of that Corporation. Documents FR1 and FR2 produced by the respondents establish that only one of five candidates summoned for the interview "turned up". According to those documents some person wished to see the petitioner, which he presumably did and satisfied himself about the petitioner's suitability. There is a comment that "His spelling is not very good", but in another minute it is stated: "He seems good material, and will surely improve on his spelling".

The choice of the petitioner for appointment was, it seems, appropriate. On the 18th of August, 1995, the petitioner was, in terms of a "notice" issued under the hand of the Director/(Operations and Legal) appointed General Manager. (see also the letter of the Director/Operations and Legal dated the 18th of August, 1995).

On the 31st of March, 1997, the Chairman of the first respondent informed the petitioner that the "Management" had decided to place him in the "Special Grade" at a specified salary point "with effect from 01st January, 1997".

On the 5th of January, 1998, the Chief Executive Officer of the first respondent informed the petitioner, identifying him as "General Manager/Secretary", (vide P9) that the petitioner's salary had been increased with effect from the 01st of January, 1998.

I believe one's salary is ordinarily increased and a person is upgraded if an employee's work and conduct are, upon a proper evaluation based upon laid down procedures, proved to be satisfactory.

According to the respondents, the Board of Directors of the 1st respondent decided at its Board meeting held on the 6th of April, 1998, to terminate the services of the petitioner as the secretary of the 1st respondent (vide P97), because, it was alleged, that the Board had lost trust and confidence in the petitioner and were wary about allowing such an important post to be held by the petitioner. It was said that "the 1st respondent is a commercial establishment which

cannot function with the petitioner as the company secretary who has failed to secure the trust and confidence of the Board of Directors.

It would appear that the only grounds for the alleged lack of trust and confidence were based on the following matters:

1. It is alleged that the petitioner was warned on the 2nd of August, 1990, by the then General Manager for leaving the office without informing anyone of his whereabouts. (7R9). There was an end to that matter, for subsequently on the 16th of August, 1995, the petitioner was appointed General Manager and on the 1st of January, 1997, he was promoted to the Special Grade in Executive Group A and in January, 1998, he was given an increased salary. The 1990 episode could in the circumstances hardly be regarded a ground for a lack of trust and confidence in April, 1998, considering the intervening events.
2. It is alleged that on the 19th of April, 1991, the Director/Financial Consultant alleged negligence and irresponsibility on the part of the petitioner. On the 26th of April, 1991, the petitioner explained the circumstances of the matters on which the allegations of negligence and irresponsibility were based. It would appear that the Director/Financial Consultant was not satisfied with the petitioner's explanation and felt it necessary to refer the matter to the Board for disciplinary action. On the 23rd of May, 1991, the petitioner discussed the matter with the Director/Financial Consultant, offered him his apologies, requested him to explain matters to the Chairman and there was an end to that matter for, as we have seen, the petitioner was subsequently made General Manager, promoted to the Special Grade and given salary increases.
3. The next matter relates to delay in taking action on a letter from the Labour Secretariat. The letter had been received at 1400 hours on the 26th of August, 1991, by the General Administration Department and minuted to the petitioner who, however, did not recollect seeing the letter before he went on leave the next day. The letter related to a matter that was not

within his purview. Nevertheless it was found that: "he should have cleared his tray of all correspondence before leaving office on the 26th . . ." It was recommended that the petitioner "be reprimanded for his lack of responsibility". That was the end of that matter for, as we have seen the petitioner was subsequently made General Manager, promoted to the special grade and given salary increases.

4. There was the Abeyratne case. It is alleged that on the 11th of July, 1996, the petitioner had been warned for misconduct. The matter arose from the interdiction of Mr. Anura Abeyratne. The petitioner's fault, it seems, was that he had instructed the Manager/Personnel & Administration to fix a formal inquiry on the 28th of June, 1996, without reference to the Director/Operations & Legal and that the Inquiring Officer selected had been from the Panel appointed by the previous management". It is said that: "the Board directed that the General Manager/Secretary, Mr. B. A. Jinadasa should be warned that he should refrain from repeating such actions in the future". There is nothing to show why the petitioner was in any way guilty of misconduct by fixing an inquiry without reference to the Director/Operations and Legal or by referring the matter to the Panel approved by the previous management. It might also be mentioned that although the case in the Labour Tribunal instituted by Mr. Abeyratne was settled and he was reinstated at the instance of the Chairman, yet there was nothing to show misconduct on the part of the petitioner. It is pertinent to reproduce the observations of Mr. Percy Wickremasekera, Director/Legal Consultant of the first respondent to its Chairman at that time, on his decision to settle Abeyratne's case: "I understand that you have called the Legal Officer and given her orders regarding the Labour Tribunal case filed by Mr. Anura Abeyratne. Since you are not the Director Legal nor even a person with any knowledge or understanding of law or legal matters your action is all the more damaging to the company's interests. Regarding this case there is a decision of the Board and all you have to do is to abide by the decision and not act in an indecent haste. You must also know and understand that professionals

such as lawyers cannot be ordered to act against their conscience. Therefore this is to request you not to interfere with the work of the Legal Division as you are neither competent nor knowledgeable to do so". In any event, the Abeyratne matter was at an end and the petitioner was subsequently promoted to the special grade and given salary increases.

5. The next matter related to a complaint in February, 1997, by Mr. Anthony M. E. Fernando who had alleged that at an interview for the selection of a freelance advertising canvasser the petitioner had asked Fernando whether he was trying to intimidate the panel by forwarding his application through the Deputy Minister of Media and Information and whether he hoped to obtain the support of the Deputy Minister's people to sustain his canvassing programme (7R34).
6. It was also alleged that: "without the prior knowledge and authority of the company and although he is not a journalist, Mr. Jinadasa had been a member of the Sri Lanka delegation to the Indian Journalists Association Congress held in India recently" (7R15).

Although the Board had decided on the 22nd of January, 1997, to place the petitioner on the special grade and to increase his salary, on the 19th of March, 1997, the Board decided not to implement the decision in view of the matters referred to at (5) and (6) above. It was recorded in the Board minutes that: "The Directors agreed that greater integrity is expected from a person holding the position of General Manager such as Mr. Jinadasa". In their statement of objections, the respondents stated that the petitioner's promotion and salary increment were withheld for misconduct. In fact the halting of the promotion and the withholding of the salary increment were only temporary, for the Board, noting that the issue regarding the complaint by Fernando had been "settled" and that the newspaper which carried an article alleging that the petitioner had been a member of the delegation to India had been corrected by the newspaper, implemented the decision of the Board dated the 22nd of January, 1997 (P138A).

What was it that had happened since the petitioner's salary as General Manager/Secretary had been increased on the 1st of January, 1998, that warranted a conclusion that the petitioner's conduct lead to any loss of faith or confidence in the petitioner or want of reliance on what he said or did? What was there to doubt the credence of what the petitioner had stated in his advice on various matters? In my view, the evidence does not show any reason to conclude that the decision of the Board on the 6th of April, 1998, was warranted. On the other hand, there were letters produced in evidence from former Chairman of the first respondent as well as from the present Chairman, commending the work of the petitioner.

The grounds for the action of the respondents as set out in paragraph 13 of the respondents' statement of objections cannot be regarded as the justification for the respondents' decision, for they among other things, took place before the increase of the petitioner's salary as General Manager/Secretary on 1st of January, 1998. Past charges were either mistaken or lapses forgiven and they were therefore irrelevant when the respondents decided to terminate the petitioner's services.

I can find no rational explanation for the conduct of the respondents in terminating the petitioner's services as secretary of the Associated Newspapers of Ceylon Limited. Nor are there any reasonable grounds for reversing its earlier decision to designate the petitioner as General Manager/Secretary. The decision to terminate the petitioner's services was in my view therefore purely dependent on the will and pleasure of the 1st respondent and capricious and not restrained by considerations of impartial, even-handed dealing. I therefore declare that the petitioner's rights guaranteed by Article 12 (1) of the Constitution have been violated by the termination of his services.

However, there is in my view no evidence to support the allegation that Article 12 (2) of the Constitution has been violated. As pointed out by the respondents, the petitioner's appointment as General Manager/Secretary on the 16th of August, 1995, his promotion to a higher grade on the 1st of January, 1997, and his salary increment

on the 1st of January, 1998, took place under the present government. Moreover, the present Chairman had given him a letter of commendation on the 27th of November, 1997.

The decision of the Board of Directors of the first respondent dated the 6th of April, 1998, terminating the appointment of the petitioner as secretary of the Associated Newspapers of Ceylon Ltd. is set aside.

I make order that the petitioner shall continue to be designated as General Manager/Secretary although it was a matter within the competence of the Board of the first respondent for the sake of good management to decide whether there should additionally be a Chief Executive Officer and to allocate such duties to the Chief Executive Officer and to the General Manager/Secretary as the Board deemed fit.

The first respondent is ordered to pay the petitioner a sum of Rs. 75,000 as compensation and Rs. 25,000 as costs.

Before I part with this judgment, I should like to refer to the fact that the Brief in this case, as in many others, ran into many hundreds of pages. There was no orderly arrangement of the documents, and, therefore, it was necessary for much time to be taken to locate documents cited by counsel during the hearing. In such a situation, the adverse effect on the efforts of counsel in presenting his or her case and the difficulty for judges in following submissions are obvious. I would respectfully recommend that due consideration be given to the making of appropriate rules with regard to the preparation of judges' briefs prior to argument.

PERERA, J. – I agree.

BANDARANAYAKE, J. – I agree.

Relief granted.