

JAYAWEERA
v.
NATIONAL FILM CORPORATION

SUPREME COURT
G. P. S. DE SILVA, C.J.
KULATUNGA, J.,
RAMANATHAN, J.
S.C. APPLICATION 119/93
(WITH S.C. APPLICATIONS NOS. 120 -144/93)

Constitutional Law – Article 126 of the Constitution – Time Bar – Relevant date for computation of time.

The Petitioners were employed by the respondent Corporation. On 24.9.90 the Corporation called for applications for promotion to Grade IV, V A and V B. The Petitioner and the others were interviewed on 20.10.90 and 27.10.90. On 30.10.90 the Corporation published a list of the Names of the Promotees. Letters of appointment dated **29.10.90** were given to the promotees. The petitioners appealed to the Chairman of the Corporation, and he on **7.12.90** replied that no useful purpose will be served by forwarding their representations to the President and the Minister. On further appeals, the Secretary to the Minister was appointed to hold an inquiry. On **1.2.93** the Chairman confirmed the impugned promotions and decided to pay the increments of the promotees which had been withheld pending inquiry. These applications under Article 126 were filed on **22.02.93**.

A preliminary objection was taken that the claims of the petitioners are time barred.

Held:

(1) The impugned appointments were published on 30.10.90. The promotees were issued with letters of appointment dated 29.10.90. They were not informed of any suspension of those appointments; hence at the conclusion of administrative inquiries in 1993, they were paid all increments of salary which had been withheld.

(2) In the circumstances, the alleged violation of rights occurred in October 1990; pursuit of administrative remedies does not interrupt the time limit of one month; hence the Petitioners applications are time barred.

Cases referred to:

1. *Gamaethige v. Siriwardane* – 1988 1 SLR 384.
2. *Wijenaikē v. Air Lanka Ltd.* – 1990 1 SLR 293.

APPLICATION for infringement of the Fundamental Right of Equality.

R. K. W. Goonesekera for Petitioner.

Asoka de Silva, D.S.G., for 1-4 Respondents.

L.C. Seneviratne, P.C. with *Ronald Perera* for 5, 6, 8,-28th and 27th-35th Respondents.

Cur. adv. vult.

August 04, 1995.

KULATUNGA, J..

Of consent the above application and applications Nos. 120 to 144/93 were heard together. Counsel agreed that the decision herein will determine all the applications.

A preliminary objection was raised against these applications on the ground that the claims of the petitioners are time barred. We heard arguments of Counsel on that objection and reserved our judgment thereon.

The petitioners are officers employed by the 1st respondent Corporation. On 24.09.90 the corporation called for applications for promotion to Grades IV, V – A and V – B of the Corporation's Service. There were 169 applicants (including the petitioners) who were interviewed by an Interview Board on 20.10.90 and 27.10.90. On 30.10.90 the Corporation published a list of 31 promotees. The petitioners allege that the said promotions were discriminatory in that the selections were unfairly made, overlooking relevant considerations such as seniority and experience, in derogation of the Scheme of Recruitment.

Letters of appointment dated 29.10.90 were given to the promotees; whereupon the petitioners appealed to the former Chairman of the Corporation who replied on 07.12.90 that no useful purpose will be served by forwarding the representations made against the impugned appointments to the President and the Minister.

On further appeals by the petitioners, Mr. Wijeratne Banda, the former Secretary to the Ministry of Fisheries was appointed to hold an inquiry into the matter. On the basis of his report the Board of Directors decided on 23.11.92 that certain officers should be charge sheeted for allegedly misleading the Interview Board by presenting wrong information. However, on 01.02.93 the 2nd respondent (The Chairman of the Corporation) confirmed the impugned promotions and decided to pay the increments of the promotees which had been withheld pending inquiry. Whereupon the petitioners filed these applications on 22.02.93.

Pursuant to a direction of this Court to add the 31 promotees as parties, amended applications were filed on 09.03.93.

Mr. J. A. N. de Silva, D.S.G. and Mr. Seneviratne President's Counsel for the respondents argued that the alleged infringement was the making of the impugned promotions on 29.10.90 which were published on 30.10.90; the former Chairman by his letter dated 07.12.90 rejected the representations made by the petitioners; the petitioners have failed to come before this Court within one month of the alleged infringement; pursuit of administrative remedies does not interrupt the operation of time limit. *Gamaethige v. Siriwardena* ⁽¹⁾ there was nothing to prevent the petitioners filing their applications before this Court within time and then seeking administrative relief also, if so advised.

Mr. R. K. W. Goonesekera for the petitioners conceded that if the violation was the appointments in October, 1990, then the petitioners are out of time. He, however, contended that there was no finality to those appointments, pending inquiry into the appeals by the petitioners, as is seen by the fact that the promotees were not paid their increments. Mr. Goonesekera argued that there can be a

decision in respect of which time will not run until it becomes final. He cited *Wijenaike v. Air Lanka Limited* ⁽²⁾, in support.

In Wijenaike's case the impugned decision was a notice of vacation of post dated 06.05.88 served on the petitioner. After the petitioner had given his explanation the Chairman. Air Lanka refused re-employment to the petitioner on 08.11.88; whereupon the petitioner filed his application complaining of infringement of his rights under Article 12(1) of the Constitution. This Court held that there is no automatic termination of services of an officer by reason of unauthorised absence; that the principle of Roman Dutch Law entitling the employer to repudiate the contract on the ground of absence of the servant in appropriate circumstances necessarily implies a right in the employee to give his explanation before a final decision is taken to repudiate or revoke the contract. Hence the relevant date for computation of time was 08.11.88 when the Chairman refused re-employment.

Wijenaike's case has no application to the instant case. In that case the final decision was postponed in terms of the applicable principles of law. Here, there is no such decision. The impugned appointments were published on 30.10.90. No question of finality, as a matter of law arose. The promotees were issued with letters of appointment dated 29.10.90. They were not informed of any suspension of those appointments; hence, at the conclusion of administrative inquiries in 1993, they were paid all increments of salary which had been withheld. I am, therefore, of the view that the alleged violation of rights occurred in October, 1990.

For the foregoing reasons, I hold that the applications of the petitioners are time barred. This application and applications Nos. 120 to 144/93 (both inclusive) are accordingly dismissed, but without costs.

G. P. S. DE SILVA, C.J. – I agree.

RAMANATHAN, J. – I agree.

Applications dismissed.