PREMARATNE
v
PEOPLE'S BANK AND OTHERS

COURT OF APPEAL.
TILAKAWARDANE, J. (P/CA).
WIJEYARATNE, J.
CA 1093/2000.
OCTOBER 22, 2002.

Writ of certiorari/mandamus – Extension of employee not granted – Does writ lie to quash such decision? – Public and Private Law remedies?

The petitioner sought to quash the decision of the 1st respondent Bank not to grant an extension of service, and a *mandamus* directing the respondents to extend his service.

Held:

(1) The extension of service beyond 55 years of age is governed by two Bank Circulars; the petitioner has no right to extension of his service.

(2) The two circulars governing the extension of service of employees of the 1st respondent Bank, are circulars whose provisions are embodied in and interwoven with the terms of employment.

(3) The subject matter of the present application being enforcement of a contract of employment of the petitioner with the respondent bank cannot be the subject of judicial review.

APPLICATION for a *writ of certiorari/mandamus*

Cases referred to:

1. *Pinnawala* v *Sri Lanka Insurance Corporation Ltd and others* – 1997 3 Sri LR 85
2. *Surangani Marapone* v *Bank of Ceylon and others* 1997 3 Sri LR 156
3. *Piyasiri* v *People's Bank* 1989 2 Sri LR 47
4. *Ariyapala Guneratne* v *People's Bank* 1986 1 Sri LR 338 (distinguish)
5. *Mendis* v *Seema Panadura Janatha Santhaka Pravahana Sevaya* 1995 2 Sri LR 284.

L.C. Seneviratne PC for petitioner.

Wijedasa Rajapakse PC with *R. Dinesh* for respondents.

February 10, 2003.

WIJEYARATNE, J.

The petitioner preferred this application seeking the substantive relief of a mandate in the nature of a writ of *certiorari* quashing the decision of the first respondent bank not to grant an extension of service (letter marked I) Also sought is a writ of *mandamus* directing the respondents to extend his service as per the circulars marked J2.

The petitioner joined the first respondent bank in the year 1969 as a clerk grade VI. Over the period of several years of service expanding over thirty-one years he secured gradual promotions to the higher grades. At the time he was refused extension of service that is in the year 2000 and sent on retirement at the age of 55 years, he was attached to Kuliyapitiya branch of the first respondent bank as an officer of grade III class 2. During this period of service the petitioner received all due increments of salary. His service to the bank during this period was in several places and was in different capacities. All these are facts admitted.

The petitioner avers that in terms of circulars marked J1 and J2 an officer in the service of the first respondent bank is entitled to apply for an yearly extension of service upon reaching the retiring age of 55 years. Accordingly the petitioner who was due to reach the age 55 years on 05.10.2000, applied for an extension of his service by one year up to 05.10.2001.

After the submission of his application for the extension of service, the petitioner states, the Regional Manager of the first respondent bank by his letter dated 13.06.2000 marked G informed the petitioner that his salary increment for the year 01.07.1999 to 01.07.2000 had not been recommended in view of the report of the Kuliyapitiya Branch Manager. The petitioners appeal on the order of the regional manager, according to his information available at the time this application was made, was successful.

His application for extension of service was responded to with letter dated 21.07.2000, marked I, informing the bank's decision to retire him upon his reaching the age of retirement at 55 years.

The petitioner preferred this application on the basis that such decision is;

a) Without reason

b) Without the petitioner being informed of the purported report of the branch manager supposed to have been considered by the panel consisting the 4th to 8th respondents appointed to determine applications for extension of service,

c) Without the petitioner being heard in his right against any allegation; and

d) That the decision of the panel not to grant extension of service to him was made unilaterally and in violation of principles of natural justice, acting arbitrarily, unreasonably, *ultra vires* their powers and in abuse of powers.

The response of the first respondent bank to these several averments was that the bank nor the several members of the panel appointed to determine applications for extensions of service, were not required in law to give reasons for the refusal of extension of service which are considered in the light of the relevant circulars marked J1 and J2 and the petitioner applying for extension of services has no right to be heard; nor are the respondents who in determining such applications exercising the discretion of the bank in relation to and upon consideration of an applicant's service record not obliged to hear an applicant. The respondent states that a writ will not lie as their function is not quasi-judicial in nature.

The petitioner concedes that extension of service beyond 55 years of age is governed by the two circulars marked J1 and J2 and the petitioner has no right to extension of his service. Yet the petitioner stresses that he has a right to make an application for extension of his service in terms of the said circulars and claims that he is entitled to have his application considered fairly,

reasonably and in the proper way, by those determining the same exercising their discretion.

The petitioner in support of his contention relies on the decisions of,*Pinnawala* v *Sri Lanka Insurance Corporation Ltd and Others* [1]and *Surangani Marapone* v *Bank of Ceylon and Others* [2]

Upon a reading of those two decisions it is clear that in both these cases what the Supreme Court considered was the fact that the authorities made their respective decisions in relation to allegations made against the respective petitioners in those cases. There is no doubt that in such inquiries or determinations, the reasons for same should be disclosed. In the instant case the panel determining extension of service was not inquiring into allegations against the petitioner who in such an event, should have been heard and given reasons for the decision. What was considered by the panel determining the extension of service was only a report on the service record of the applicant which consisted of R1 to R6 on the conduct of the applicant over the period of past several years, as an employee of the bank and such service record was found in his personal file having been embodied there with due and contemporaneous notice to the applicant who does not dispute the same. The panel determining the extension of service, according to the two circulars governing the matter in issue, was required to make an assessment of the service of the applicant in relation to his past conduct and not to inquire into his conduct in relation to any particular allegation. An assessment of the work and conduct of an employee can never be reasonably expected to be done in consultation with the employee concerned because it would always be a subjective test on the established record of service done objectively to determine the goodness of the record and essentialness of his service to the institution, the bank, according to the accepted norms and standards of work. To give an applicant the right to be heard would mean to allow him to judge his own cause, because it cannot be reasonably be expected of a human being to help determine matters without favour to his interests as he claim in the matter to his economic benefit. Accordingly I am of the view that the two decisions cited above have no application to the facts of the instant case.

The respondents argued that the impugned decision is not amenable to writ jurisdiction of this court for the reason that the subject matter being a contract of employment, does not come within the realm of public law, but is a matter governed by private law only. The respondents relied on the decision of *Piyasiri* v *Peoples Bank* [3] holding that the respondent bank is not a public body but basically a commercial bank.

The petitioner argues that in the making of the decision of the above referred case, the Court of Appeal omitted to consider the decision of *Ariyapala Guneratne* v *Peoples Bank* [4] which is a judgment delivered by a bench of five judges of the Supreme Court. This court finds that the decision of the Supreme Court is distinguishable because the issue considered was in relation to the alleged violation of fundamental rights only. It was held that:

> "the analysis of the law should be on the basis that the impugned acts or provisions constitute an invasion of fundamental rights and not on the basis that they fall within the exclusive domain of the private law of employment".

In the above decision the Supreme Court at no stage ruled that what falls within the exclusive domain of the private law of employment is amenable to writ jurisdiction or public law remedies. But for the limited purpose of the application of the provisions of section 18(2) of the 1972 Constitution, the concept of 'State' has been extended to include 'almost any institution performing public functions' and to that end the analysis of the law should be on the basis that the impugned acts or provisions constituted an invasion of fundamental rights'. The issue involved in the present application is not one falling within the ambit of fundamental rights, but a matter of terms of employment governing the extension of service beyond the stipulated age of retirement. The petitioner unequivocally concedes that he has no right of extension of his service.

The two circulars governing the extension of service of employees of the first respondent bank (marked J1 and J2) are on circulars whose provisions are embodied in and interwoven with the terms of employment. They are not even regulations, which has a statutory flavour at least, as to be amenable to the public law remedy of judicial review. In this regard the more recent decision in

the case of *Mendis* v *Seema Sahitha Panadura Janatha Santhaka Pravahana Sevaya* [5] is more relevant.There it was held;

> "(iv) what is here sought to be done is the enforcement of a contract of employment; contracts of employment are enforceable by ordinary actions; and not by judicial review. In the circumstances the dispute as to the contract of employment is solely a matter within the purview of private law and not a matter for judicial review".

In deciding so, S.N.Silva, J., (as he then was) commented that

> "The trend of authority is thus one way. Learned counsel for the petitioner has not been able to cite any authority in support of his claim that matters pertaining to a company registered under the Companies Act or matters pertaining to a contract of employment could be subject of judicial review".

Such authority is not cited in the present case either. Accordingly this court holds that the subject matter, of the present application, being enforcement of a contract of employment of the petitioner with the first respondent bank, cannot be the subject of judicial review. In view of the above determination it is not necessary to examine the effect of remedy being granted.

In the result the application of the petitioner is dismissed with costs fixed at Rs. 3000/-.

SHIRANEE TILAKAWARDANE, J. (P,C/A) - I agree

Application dismissed.