

TENNAKOON
V.
PIYADIGAMA AND OTHERS

SUPREME COURT.
G.P.S. DE SILVA, C.J.
KULATUNGA, J. AND
RAMANATHAN, J.
S.C. APPLICATION NO. 275/94.
28 MARCH, 02 MAY AND 13 JUNE, 1995.

Fundamental Rights - Compulsory and premature retirement on suppression of post.

When there is a change of government it may become necessary to man positions with different persons. It may also become necessary to provide "personal staff" to Ministers. But officials in the position of the 1st Respondent must ensure that such action is lawfully taken, in accordance with government decisions and without causing serious prejudice to particular public officers. Here the Petitioner who was appointed Senior Assistant Secretary (Information) coming over from a similar position in the Ministry of Public Administration, Provincial Councils and Home Affairs was prematurely and compulsorily retired. He was not informed of his option to revert to his earlier post; when he applied for reversion, everything was done to close all avenues of reversion or alternative employment. No effort whatsoever was made to find alternative employment for him. Instead the 1st Respondent compulsorily and prematurely ordered his retirement. He was subjected to selective discrimination.

APPLICATION for relief for infringement of fundamental rights guaranteed under Article 12(1) of the Constitution.

R.K.W.Goonesekera with J.C.Weliamauna and Miss Shiranthi Jayatilleke for Petitioner.

Surath Piyasena S.S.C. for Respondents.

Cur.adv.vult.

June 26, 1995.
KULATUNGA J.

The Petitioner has been a public officer from 1961. He complains

that the 1st Respondent (Secretary to the Ministry of Labour and Vocational Training) has purported to compulsorily retire him at the age of 52 years and thereby infringed his rights under Article 12(1) of the Constitution.

The Petitioner was a government teacher from 1961 to 1971. From 1972 - 1989 he was a Press Officer in the Department of Information, and the Ministry of Cultural Affairs and Labour. He rose to the position of Senior Assistant Secretary (Information) in the Ministry of Labour. From 1989 - 1992 he served in the same capacity in the Ministry of Public Administration, Provincial Councils and Home Affairs. In 1992, he reverted to the Ministry of Labour, as Senior Assistant Secretary (Information).

On 09.09.94 the 1st Respondent addressed a letter to the Secretary/Ministry of Public Administration, Local Government and Plantation Industries, requesting for the release of G.H.S. Premasiri of the SLAS as the 2nd Respondent (Minister of Labour & Vocational Training) intended to appoint him as the Senior Assistant Secretary (Information) in the Ministry (Exhibit X2). Next, the 1st Respondent by his letter dated 15.09.94 informed the Petitioner that the Petitioner's services will be terminated with effect from 30.09.94 as the 2nd Respondent intended to appoint another officer as Senior Assistant Secretary (Information) (Exhibit P2).

On 20.09.94 the petitioner inquired from the 1st Respondent what his new duties will be in the event of the proposed new appointment (Exhibit P3). This letter was not replied but on 07.10.94 the 1st Respondent issued a letter of appointment to the 3rd Respondent appointing him as Co-ordinating Officer (Information) to the 2nd Respondent. The letter states that the appointment is temporary and personal to the 2nd Respondent and that the 3rd Respondent will hold office subject to termination, at the will of, the 2nd Respondent. He would otherwise be subject to the Establishments Code and Financial Regulations etc. and receive a salary of Rs.45,120 - 57,120 and Provident Fund benefits (Exhibit 1R11).

Thereafter, the 2nd Respondent obtained a Cabinet decision dated 12.10.94 for the suppression of the posts of Senior Assistant Secre-

tary (Information) and Assistant Secretary (Trade Unions) in his Ministry. According to the decision, the person holding the said posts were permitted, at their option, to revert to their earlier posts or to retire from service (Exhibit 1R5). This decision was obtained presumably for the reason that according to a government decision made on 05.10.94 and published in PA Circular No.36/94 dated 19.10.94 (Exhibit XI), a Minister was permitted personal staff including a Co-ordinating Officer (Information). However, a Minister will not be entitled to appoint a Co-ordinating Officer (Information) in his personal staff where there is a post of Assistant Secretary (Information) in the cadre of his Ministry; hence the appointment of the 3rd Respondent made on 07.10.94 which was contrary to that decision had to be regularised.

Next on 26.10.94 the 1st Respondent informed the Petitioner that he would be retired with effect from 31.10.94 in view of the fact that the post of Senior Assistant Secretary (Information) had been abolished by the aforesaid Cabinet decision (Exhibit P4). In so addressing the Petitioner, the 1st Respondent failed to disclose the option granted to an affected officer, to revert to his previous post. However, in his letter of the same date addressed to W.A. Somasiri, Assistant Secretary (Trade Unions) whose post was also abolished, the 1st Respondent copied the Cabinet decision fully and requested him to inform within 3 days whether he would revert to his previous post or retire from service.

Somasiri did not retire; but he was reverted to a vacant post in the Special Grade in the Sri Lanka Middle Level Technical Service, in the Department of Labour.

On 27.10.94 the Petitioner informed the 1st Respondent that he (the Petitioner) had learnt that the Cabinet decision gives an affected officer the option to revert to his previous post; as such he cannot be compulsorily retired and would opt to revert to his previous post (Exhibit P5). On 14.11.94, the 1st Respondent replied stating that the petitioner's previous post namely, Senior Assistant Secretary (Information) in the Ministry of Public Administration, had also been abolished and the substitute post, Co-ordinating Officer (Information), in that Ministry had been filled; hence the petitioner will be retired from service (Exhibit P6).

By his letters dated 14.11.94 and 15.11.94 addressed to the 1st and 2nd Respondents respectively, the Petitioner reiterated that in terms of the Cabinet decision, he cannot be compulsorily retired and requested that he be given alternative employment until he reached his age of retirement (Exhibits P7 and P8).

In his affidavit, the 1st Respondent admits that the post of Senior Assistant Secretary (Information) still exists in the Ministry of Shipping, Ports, Rehabilitation and Reconstruction and in the Ministry of Trade. In his petition, the Petitioner states that the said post still exists in two other Ministries namely, the Ministry of Forestry and the Ministry of Industries. This has not been contradicted. In his counter affidavit he states that, even after the Cabinet decision there have been appointments to the post of Senior Assistant Secretary (Information) in the Ministry of Transport, Highways, Environment and Women's Affairs and the Ministry of Irrigation, Power and Energy. This has been admitted in the written submissions filed on behalf of the Respondents.

On these facts, Mr. R.K.W. Goonesekera, learned Counsel for the Petitioner submits that the decision to terminate the services of the Petitioner and to place him on retirement is *mala fide*, arbitrary, unjust, discriminatory and for a collateral purpose, all of which are violative of the Petitioner's right to equal protection of the law.

The learned Senior State Counsel submits that the other officers who hold posts of Senior Assistant Secretary (Information) and Somasiri who was found alternative employment are not similarly circumstanced *vis-a-vis* the Petitioner.

I am of the view that the Petitioner and other officers are in the like situation being public officers who are normally entitled to serve until the age of retirement. However, the Petitioner's post was suppressed and he was purportedly retired, whilst some officers have been permitted to continue as Senior Assistant Secretary (Information). Somasiri whose post was suppressed was given alternative employment. There is no rational basis for such action. Hence, the allegation of unlawful discrimination is established.

Consequently, I am in agreement with the submissions of Mr. Goonesekera. It seems to me that the Petitioner has been subjected to selective discrimination. When there is a change of government it may become necessary to man certain positions with different persons. It may also become necessary to provide "personal staff" to Ministers. But officials in the position of the 1st Respondent must ensure that such action is lawfully taken, in accordance with government decisions and without causing serious prejudice to particular public officers. Here the Petitioner was not informed of the option to revert to his earlier post; when he applied for reversion, every thing was done to close all avenues of reversion or alternative employment; no effort whatsoever was made to find alternative employment for him; instead, the 1st Respondent compulsorily and prematurely ordered his retirement.

For the foregoing reasons, I grant the Petitioner a declaration that the impugned retirement of the Petitioner is violative of his fundamental rights under Article 12(1) of the Constitution and hence null and void and of no force or effect. As the post held by the Petitioner in the Ministry of Labour has been abolished, I direct the 1st and 2nd Respondents and the State to appoint him to another post of Senior Assistant Secretary (Information) in the Public Service or to any other comparable post.

On the question of compensation Mr. Goonesekera submits that the Petitioner is entitled to substantial compensation. I am in agreement with this submission. Accordingly, I direct the State to pay him compensation in a sum of Rs.60,000/- (Rupees Sixty Thousand) being the minimum loss of his earnings since the impugned retirement on 31.10.94, based on the scale of salary specified in 1R2 (Rs.72,000 - 10 x 3600 - 108,000/-) Secretary (Information) in the Ministry of Public Administration in 1989. I also direct the 1st Respondent to pay the Petitioner costs in a sum of Rs.5000/- (Rupees Five Thousand).

G.P.S. DE SILVA, C.J. – I agree.

RAMANATHAN, J. – I agree.

Relief granted.