

MANAGE
v.
KOTAKADENIYA

SUPREME COURT.
DR. AMERASINGHE, J.,
WADUGODAPITIYA, J. AND
DHEERARATNE, J.
S.C. 439/95
SEPTEMBER 19 AND 30, 1996.

Fundamental Rights – Constitution, Article 12(1) – Unequal treatment – Discriminatory conduct – Extension of service – Retirement, Section 12 Pension Minute – Public Administration Circular, 218 – Disciplinary Proceedings.

The petitioner was first interdicted and thereafter retired from Service; his application for an extension of service upon reaching 55 was refused.

The respondents position was for three specific offences stated it was considered undesirable to allow the petitioner an extension of service.

Held:

(i) No reasons were given for the findings in respect of the first two offences, in any event the appeal in one of them has not been concluded; with regard to the 3rd charge it was withdrawn.

In the circumstances, the refusal to extend the services was not based on adequate grounds:

“Although the petitioner had not been reinstated and continued in service after retirement by the 1st respondent, others who were similarly circumstanced had been treated differently”.

Held Further:

(ii) Order of retirement is bad in law as much as an order can be made only by the Secretary to the Ministry (Public Administration Circular 218), moreover such an order envisages formal disciplinary proceedings prior to such a decision.

APPLICATION under Article 126 complaining of the infringement of the Fundamental Right of Equality.

L. C. Seneviratne P.C. with *Ronald Perera* and *N. D. S. Jayasinghe* for petitioner.
K. Siripavan D.S.G. for 1, 2, 5, 6, respondents.

December 20, 1996.

AMERASINGHE. J.

The petitioner was a Class I Post Master attached to the Nugegoda Post Office. He was interdicted from service by letter P10 and retired from service by letter P12. His application for an extension of service upon reaching the age of 55 years was refused. The petitioner was granted leave to proceed for the alleged infringement of his Fundamental Rights guaranteed by Article 12(1) of the Constitution.

The following facts are not in dispute:

(1) On the 1st of March 1995 the 1st respondent by her letter dated 1.3.95 imposed a fine of Rs. 10/- on the petitioner under Chapter 48 of the Establishments Code.

(2) On or about 2nd February 1995 the 2nd respondent served a Charge Sheet on the petitioner alleging that a false estimate relating to repairs to official quarters had been submitted by the petitioner. The 2nd respondent had by his letter dated 9.6.1995 (P2) imposed a fine of Rs. 4/- on the petitioner, having found that the petitioner's reply was unsatisfactory.

(3) The petitioner was on 13th June 1995 alleged to have kept 74 Air Mail letters at the Nugegoda Post Office in the safe without informing the Chief Post Master and without entering the relevant information in the register.

For these reasons, it was considered undesirable to allow the petitioner an extension of service. The petitioner however, maintains that these were insufficient grounds for concluding that his conduct was unsatisfactory.

With regard to the 1st charge, the petitioner pointed out that a Charge Sheet had been served on him on 30th May 1991 (P3) to which the petitioner had replied by his letter of 2.8.91 (P4). However, four years afterwards the petitioner received a letter from the 1st respondent dated 1.4.95 (P5) wherein it was stated that the explanation was unsatisfactory, although no reasons were given for coming to that conclusion. The petitioner was informed that a record of the imposition of the fine would be made in his personal file. The petitioner appealed from the order and the appeal is pending.

With regard to the 2nd charge too, the petitioner received only a laconic intimation that his explanation was unsatisfactory without any reasons being given for the conclusion.

With regard to the 3rd charge relating to the Air Mail letters, the petitioner states that he took the Air Mail letters that had been left on the racks by the delivery men and kept them in the safe to prevent them being stolen. He states this was in accordance with the usual procedure. The fact that this was the normal procedure is corroborated by the affidavits of the Sorting Officer (P8), the Assistant Post Master of the Nugegoda Post Office (P9) and the Chief Post Master of the Nugegoda Post Office (P9A). The 1st respondent however, seems to have preferred to act on statements made by two Porters (1R5) and (1R6).

Although the petitioner had been charged in respect of the matter relating to Air Mail letters on 14.8.95, the charges were withdrawn by the Secretary to the Ministry at a hearing by the Committee on Public Petitions.

The sole ground for refusing to grant the extension of service which the petitioner had sought was the 2nd respondent's opinion that it was undesirable to extend the services of the petitioner in view of the several offences he had committed. As we have seen, no reasons were given for the findings in respect of the first two offences and in any event, the appeal in one of them has not been concluded.

With regard to the 3rd charge, it was withdrawn and therefore cannot be taken into account. The learned Deputy Solicitor-General explained that the charge was withdrawn by the Secretary to the Ministry as a part of settlement under which the petitioner was required to retire immediately after the charge was withdrawn. This was denied by the petitioner who maintains that the charge was withdrawn because it was "spurious". There is no affidavit from the Secretary supporting the averment that the withdrawal of the charges was a part of a settlement.

In the circumstances, I am of the view that the refusal to extend the services of the petitioner was not based on adequate grounds. On the other hand, the petitioner pointed out that his problems began after a journal of his trade union, of which he was the editor, had been

critical of the 1st respondent. The relevant comments were made in January 1995. It is significant that with regard to the 1st charge which had been made in 1991, the explanation of the petitioner had been rejected and the fine imposed in March 1995.

It is to be noted that the Chief Post Master, Nugegoda and the Divisional Superintendent of Post, Colombo had recommended the extension of the petitioner's service (1R4) and !R4b).

Although the petitioner had not been re-instated and continued in service after retirement by the Post Master-General, others who were similarly circumstanced had been treated differently. The petitioner has given the instances of K. G. Albert, Grade I, Post Master, D. Wanniarachchi, Class II, Post Master and P. Kodisinghe, Class II Post Master who had been re-instated and given extensions of service after they had been retired.

For the reasons set out above, I am of the view that the petitioner has been the victim of unequal treatment and discriminatory conduct and this entitles him to declaration that his Fundamental Rights under Article 12(1) of the Constitution had been violated.

The 1st respondent by letter dated 5.7.95 (P12) retired the petitioner from service under Section 12 of the Pensions Minute (P13). I hold that the order of retirement is bad in law as such an order can be made only by the Secretary to the Ministry. (See Public Administration Circular 218 (1R7). Moreover, such an order envisages formal disciplinary proceedings prior to such a decision. I therefore quash the order of retirement made by the 1st respondent as being no force or avail in the law.

The petitioner shall be paid a sum of Rs. 25,000/- as compensation and Rs. 5,000/- as costs.

DHEERARATNE, J. – I agree.

WADUGODAPITIYA, J. – I agree.

Application allowed

Relief granted.