

**HETTIARACHCHI**  
v.  
**SENEVIRATNE,**  
**DEPUTY BRIBERY COMMISSIONER AND OTHERS (NO. 1)**

**SUPREME COURT**  
**M. D. H. FERNANDO, J.**  
**AMERASINGHE, J. AND**  
**P. R. P. PERERA, J.**  
**S.C. APPLICATION 127/94**  
**APRIL 28, 1994.**

*Fundamental Rights - Application for leave to proceed - Appointment of Bribery Commissioner by Cabinet - Circulars laying down procedures for recruitment to and promotion in the public service - Article 158 of the Constitution.*

**Held:**

Under Article 158 of the Constitution, the Cabinet is expressly empowered to exercise the power of appointment notwithstanding prior delegation of the power of appointment to the Public Service Commission.

Although the Cabinet has laid down national policy for recruitment to and promotion to the public service in a series of circulars, these are addressed to Secretaries to Ministries, Chief Secretaries to Provincial Councils and various other officials of public authorities. They have not been expressly made applicable to the Cabinet itself; and in fact some of the provisions of the circulars seem to be quite inappropriate in relation to appointments by the Cabinet.

There is no authority suggesting that the delegating authority is necessarily bound by the conditions which it imposes upon the delegate. The circulars are not, as a matter of law, applicable to or binding on the Cabinet.

**Case referred to :**

*Silva. v. Attorney General* (1958) 60 NLR 145.

**APPLICATION** for leave to proceed in application for relief for infringement of fundamental rights guaranteed by Article 12(1) of the Constitution.

*T. Walalyadda* for petitioner.

April 28, 1994.

**FERNANDO, J.**

Learned Counsel for the petitioner supports this application for leave to proceed on two grounds only.

First he submits that the appointment of the 1st respondent as the Deputy Bribery Commissioner by the Cabinet of Ministers was illegal, or otherwise improper, because the Cabinet had delegated the power to make that appointment to the Public Service Commission by P3 of 26. 2. 92; and thereafter it was only the Commission which could have made that appointment. Although the principle that delegation denudes the delegating authority of its power was upheld in *Silva v. Attorney General*<sup>(1)</sup> now Article 158 of the Constitution expressly provides otherwise, so that the Cabinet is entitled to exercise the power of appointment notwithstanding prior delegation.

Secondly, he submits that the Cabinet has laid down national policy for recruitment to and promotion in the public service in a series of Circulars (P4 to P7 and P11) ; that even if the Cabinet had the power to make that appointment, the principles and procedures laid down in those Circulars were necessarily and automatically applicable to and binding on the Cabinet; and that in appointing the 1st respondent the Cabinet acted in violation of those Circulars:

Counsel submits that those principles and procedures, being matters of national policy, are applicable both to the delegate and to the Cabinet itself. However, we find that the Circulars are addressed to Secretaries to Ministries, Chief Secretaries to Provincial Councils, and various other officials of public authorities; they have not been expressly made applicable to the Cabinet itself. Indeed some of the provisions of the Circulars seem to be quite inappropriate in relation to appointments by the Cabinet. Thus paragraph 8 of P4 which requires the Ministry of Public Administration to set up a Committee to monitor the implementation of the provisions of the Circular is quite inconsistent with its applicability to the Cabinet. Learned Counsel was unable to cite any authority suggesting that the delegating authority is necessarily bound by conditions which it imposes upon the delegate.

We are of the opinion that these Circulars are not, as a matter of law, applicable to or binding on the Cabinet.

These two contentions, involving questions of law as to the power and authority of the Cabinet to make the impugned appointment, and the principles and procedures applicable thereto, are unsustainable.

Although invited to make any further submissions he wished to, learned Counsel did not address us on any of the other averments of fact contained in the petition, to support an allegation that the fundamental rights of the petitioner had been violated.

Leave to proceed is therefore refused.

**AMERASINGHE, J.** – I agree.

**PERERA, J.** – I agree.

*Leave to proceed refused.*