

**UPASENA**  
**v**  
**RICHARD PATHIRANA MINISTER OF EDUCATION AND**  
**OTHERS**

SUPREME COURT  
ISMAIL, J.  
WIGNESWARAN, J.  
J. A. N. DE SILVA, J.  
SC 50/99  
MARCH 14, 2002

*Fundamental Rights Articles 12 (1) and 126 – Extension of service not given – Unreasonable – arbitrary? – Violation – College of Education Act No. 30 of 1983.*

The Petitioner complains that his second extension of service was not granted. The petitioner was promoted to the post of Dean of the College by the Education Service Committee of the Public Service Commission and was acting as the Vice President. Thereafter he was appointed as President of the College with effect from 1.6.1993 subject to the condition that he should obtain a post-graduate degree from a recognized university within a period of 3 years.

Thereafter in 1994 he obtained his Masters and was confirmed in the said post with effect from 1.6.1993. When the petitioner reached his fifty years on 17.10.1997 he applied for an extension and was duly granted 1 year extension. He submitted an application for the second extension from 17.10.1998 - 16.10.1999 which was recommended by the Chief Commissioner of the Board. Though there was no reply he continued to work till 31.12.1998

- and was paid his salary. On 15.12.1998 he was informed that an extension could not be granted to him beyond 56 years. The petitioner complains of violation of Article 12 (1).

The respondent contended that at the time of the petitioner's appointment to the post of President of the College he did not possess the requisite qualifications applicable to the post - graduate degree and 15 years experience and further on or about 3.12.1997 that Cabinet of Ministers decided the services of persons in the petitioner's category should not be extended beyond 55 years.

**Held:**

- (1) When the petitioner was appointed as the President of the College on a Cabinet decision he was given 3 years time to obtain post-graduate qualification which he lacked at the time of appointment. He had obtained this requisite qualification within the stipulated period. In fact his first extension was duly granted.
- (2) On the question of the requisite experience, it is observed that the Education Department had not found anything wanting in his administration during the relevant period. In the circumstances, the decision not to extend the services beyond 56 years was unreasonable and arbitrary and constitutes a violation of Article 12 (1).

**APPLICATION** under Article 126 of the Constitution.

*R.K.W. Goonesekera with Upul Jayasuriya* for petitioner.

*Saleem Marsoof* PC Additional Solicitor General with *Indika Demuni de Silva* SSC for respondents.

*Cur.adv.vult.*

March 14, 2002.

**J. A. N. DE SILVA, J.**

The petitioner's complaint is in respect of the refusal to grant him his second extension of service as the President of the Hapitigama College of Education at Mirigama, a College established under the College of Education Act, No. 30 of 1985. 01

The petitioner who is a graduate from the Vidyodaya University was appointed as a graduate teacher at Deiyandara Maha Vidyalaya, Matara with effect from 26.07.1970. Subsequently he was promoted as an acting Principal and a Teacher Trainee Instructor attached to the Colombo South Education office at Green Path. As evidenced by document Plc he obtained a Post-graduate Diploma in Education from the University of Colombo in 1979. 10

In 1986 when Colleges of Education were established under the Colleges of Education Act, No. 30 of 1983 he was appointed as an Assistant Lecturer Grade 01 at the Mirigama Hapitigama College of Education with effect from 01.01.1985 with the approval of the Cabinet of Ministers. Thereafter, the Education Service Committee of the Public Service Commission promoted him to the post of Dean of the said College with effect from 01.11.1986 (Vide P4b (1) and b (11) ) and as the acting Vice President on 01.03.1990.

In early 1993, the petitioner made an appeal to the former 20  
President of Sri Lanka who was also the Minister of Education seeking confirmation in the said post. Although the said appeal had been forwarded to the Education Service Committee of the Public Service Commission with an endorsement by the President to confirm the petitioner along with two others similarly circumstanced viz. Mrs. V. Marimuttu acting Principal of Sripada College of Education and Mr. A. R. A. Aziz acting President of Addalachchenai College of Education, the Education Service Committee by letter dated 22.06.1993 informed the Secretary to the Ministry of Education of its inability to do so as all three had not possessed the 30  
qualifications stipulated in the relevant Scheme of Recruitment. In this back drop the Minister of Education submitted a Cabinet Paper seeking approval to appoint Principals of Technical Colleges and Presidents of College of Education who have completed at least one year of satisfactory service as at 01.06.1993 and this proposal was approved on 07.07.1993. Thereafter by letter marked P4(D) the Education Service Committee of the Public Service Commission appointed the petitioner to the post of President Hapitigama College of Education with effect from 01.06.1993, subject to the condition that he should obtain a post-graduate 40  
degree from a recognized university within a period of three years. As evidenced by document marked P1 (b) the Petitioner had obtained the degree of Master of Education from the University of Colombo in 1994 and was confirmed in the said post with effect from 01.06.1993 P (11). When the petitioner reached the fifty fifth year on 17.10.1997, the optional age of retirement from the public service, he applied for an extension which was duly granted for one year in terms of the Establishment Code. He submitted an application for the second extension of service for the period 50  
17.10.1998 to 16.10.1999 to the Secretary to the Ministry of

Education through the Chief Commissioner of the Board (5th respondent) who recommended it. Although there was no reply to that letter the petitioner continued to work till 31.12.1998 and was paid his salary. By letter dated 15.12.1998 (P9) the petitioner was informed that an extension could not be granted to him beyond 56 years.

Learned Counsel for the petitioner submitted that the refusal to grant the 2nd extension was arbitrary and unreasonable and constitutes a violation of the petitioners fundamental rights guaranteed under Article 12 (1) of the Constitution of the Republic of Sri Lanka. 60

Mr. Marsoof P.C./Additional Solicitor General who appeared for the respondents submitted that the refusal of the second extension by the Education Service Committee of the Public Service Commission was justified in view of the Cabinet decision dated 25.11.1998 (4R.1) which was based on an earlier cabinet decision. Mr. Marsoof P.C. submitted that on or about 03.12.1997, the Cabinet of Ministers decided that the services of persons who have been appointed to any Management or Administrative post in the cadre of any Educational Institute outside the approved scheme of recruitment should not be extended beyond the age of 55 years. He drew the attention of court to Cabinet Memorandum dated 28.11.1997 and the Cabinet decision dated 03.12.1997 and also to the circular letter dated 22.06.1998 issued to the Secretary to the Ministry in terms of the said cabinet decision. It was the contention of the respondents that at the time of the petitioner's appointment to the post of President of Hapitigama College of Education, the petitioner did not possess the requisite qualifications applicable to the post namely, a post-graduate degree from a recognized University and fifteen years' experience. Therefore the decision of the Cabinet not to allow such persons extensions beyond 55 years applied to the petitioner. 70 80

It is observed that when the petitioner was appointed as the President of the Hapitigama College on a Cabinet decision he was given three years' time to obtain post-graduate qualification which he lacked at the time of the appointment. The petitioner obtained this requisite qualification within the stipulated period. The petitioner's first extension in service was duly granted by the

Secretary of the Ministry of Education P (6). It is also to be noted that the petitioner was made permanent in his post of President, Hapitigama College of Education by the Secretary to the Education Committee, after being satisfied that the petitioner was qualified to be made permanent vide (P 11). The petitioner's 2nd extension too had been recommended by the Chief Commissioner of the Colleges of Education Board, the 5th respondent in this case. 90

On the question of the requisite experience it is observed that the Education Department had not found anything wanting in his administration during the relevant period. In fact the confirmation of the petitioner in the post is an indication that he is an able administrative officer. I do not think that respondents should be allowed to take advantage of this fact viz lack of experience having regard to their conduct. 100

It is also to be noted that the petitioner's case is different to that of Mrs. Marimuttu and Mr. Aziz who were also appointed as Presidents of Education Colleges. There is nothing to establish that the above mentioned two were required to obtain the necessary educational qualification with their appointment. Even if their appointments were conditional it may be that they were not confirmed in their posts due to their failure to fulfill the conditions after the appointment. There is no material before us to think otherwise. 110

In the circumstances of this case I hold that the decision not to extend the services of the petitioner beyond 56 years was unreasonable and arbitrary and constitutes a violation of the petitioner's fundamental right guaranteed under Article 12 (1) of the Constitution. I therefore direct that he be paid a sum of Rs. 75,000.00 as compensation by the State. The petitioner is also entitled to a sum of Rs. 5,000.00 as costs of this application.

**ISMAIL, J.** - I agree.

**WIGNESWARAN, J.** - I agree.

*Relief granted.*

*Compensation ordered.*