

PROF. J. W. WICKRAMASINGHE

v

THE UNIVERSITY OF SRI JAYAWARDENAPURA AND OTHERS

SUPREME COURT
BANDARANAYAKE, J.
EDUSSURIYA, J. AND
DE SILVA, J.
SC (FR) APPLICATION NO 587/2002
AUGUST 5, SEPTEMBER 3
AND DECEMBER 5, 2003

Fundamental Rights – Denial of the right to spend sabbatical leave as allowed by the University Grants Commission – Arbitrary decision of the University – Article 12 (1) of the Constitution.

The petitioner who was the Vice chancellor of the 1st respondent university was due to attain 64 years on 16.3.2003 and according to a strict interpretation of circular No. 408 he would not be granted sabbatical leave under that circular. However the 2nd respondent, the University Grants Commission (UGC) allowed him 2 years sabbatical leave from 01.06.2002 to 31.05.2004 on

the recommendation of the University under special circumstances, namely that he would relinquish his duties as vice Chancellor on 31.05.2002. Later on the U.G.C. gave instructions to Universities that in future to strictly comply with circular 408 and explained to the University of Sri Jayawardenapura that those instructions did not affect the petitioner as leave had been allowed in special circumstances. Notwithstanding this clarification the University insisted that the petitioner should resume duties on 16.03.2003. Even at that time there were University dons who were on sabbatical leave after reaching the age of 64 years.

Held:

- (i) In view of leave granted to him the petitioner had a legitimate expectation of being on leave up to 31.05.2004.
- (ii) The instructions given by the University that the petitioner resumes duties by 16.03. 2003 were arbitrary and violative of Article 12 (1) of the Constitution.

Per Bandaranayake, J.

“Equality and arbitrariness are sworn enemies. One belongs to the Rule of Law....while the other to the whim and caprice of an absolute monarch”

Case referred to :

1. *E.P. Royappa v State of Tamil Nadu* – AIR 1974 Sc 555

APPLICATION for relief for infringement of fundamental rights.

Romesh de Silva P.C., with *Sugath Caldera* for petitioner.

A.S.M. Perera, P.C. with *Prasanna Soya* for 1st respondent.

Rajive Goonatilake, State Counsel for 2nd respondent.

Cur. Adv. vult.

January 29, 2004

SHIRANI BANDARANAYAKE, J.

The petitioner, who had held the positions of Assistant Lecturer, Lecturer, Senior Lecturer, Associate Professor and later the position of Vice Chancellor of the 1st Respondent University, complained that the decision of the 1st respondent university not to permit the petitioner two years leave from 01.06.2002 to 31.05.2004 out of his accumulated sabbatical leave is a violation of his funda- 01

mental rights guaranteed in terms of articles 12(1), 12(2) and 14(1)g of the Constitution.

Leave to proceed was granted by this Court for the alleged infringement of Article 12(1) of the Constitution.

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The petitioner's complaint, *albeit* brief, is as follows:

The petitioner became entitled for his sabbatical leave in 1994 (P3) and had decided to accumulate such leave. He conveyed this decision to the 1st respondent which was accepted by letter dated 27.05.1994 (P4). Having completed a further seven years by 2001, the petitioner once again became entitled to sabbatical leave in 2001 and by that year was entitled to two years sabbatical leave with full pay. Thereafter the petitioner requested the 1st respondent to grant two years sabbatical leave with full pay to which, according to the petitioner the University had agreed and promised the petitioner that such leave would be granted to him. In or about this period, the petitioner became the Vice Chancellor of the 1st respondent University. Due to this reason he requested that the said sabbatical leave entitlement be deferred until 01.06.2002. The petitioner submitted that the 1st and 2nd respondents, with the full knowledge that the petitioner would be completing 64 years of age in the month of March 2002, granted the petitioner two years sabbatical leave with full pay with effect from 01st June 2002.

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The petitioner therefore claims that, he had a legitimate expectation to have two years of sabbatical leave with full pay from 01.06.2002 till 31.05.2004. Accordingly, after relinquishing his duties as the Vice Chancellor of the 1st respondent University, the petitioner commenced his sabbatical leave in or about 01.06.2002. He had made arrangements to spend his sabbatical leave which arrangement, included accepting foreign assignments.

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The petitioner submitted that on 02.09.2002, he was informed by telephone that the 1st respondent had decided that the petitioner should resume duties on 16.03.2003. According to the petitioner he had no communication whatsoever that his sabbatical leave has been reduced and that he should resume duties earlier than expected. Immediately after receiving this intimation, the petitioner wrote to the 3rd respondent (P11) querying the changes the 1st respondent had made to his already approved sabbatical leave.

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The 1st respondent had replied informing the petitioner that a communique had been sent to the petitioner in July 2002 (P12 and P13).

The petitioner contended that, since he had commenced his sabbatical leave in June 2002, he had not visited his Department at the 1st respondent University. Therefore he takes up the position that there was no possibility of his receiving the letter dated 24.07.2002 (P13), which had been sent to the Department of Economics of the 1st respondent University. further the petitioner contended that the notification sent to him informing that he should resume duties on 16.03.2002, had been sent only after he applied for his overseas leave. 50

The petitioner submitted that there have been others who have enjoyed their sabbatical leave and who are still away from their respective Universities on sabbatical leave at the time of the filing of this application notwithstanding the fact that they had completed their 64th birthday. The petitioner has named some University Dons who have availed themselves of their sabbatical leave irrespective of the fact that they are over 64 years of age. 60

The petitioner therefore complained that the action taken by the 1st respondent University to revoke the decision to grant sabbatical leave from 16.03.2003 to 31.05.2004 is malicious and arbitrary.

The Vice Chancellor of the 1st respondent University as at April 2003, and the 2nd respondent filed their objections.

The Vice Chancellor of the 1st respondent University conceded that the petitioner had qualified for sabbatical leave and could not avail himself of such leave as he was the Vice Chancellor at the time concerned. In terms of P2 he submitted that the 1st respondent had no authority to approve sabbatical leave to the petitioner, but admitted that the Council of the 1st respondent University requested the 2nd respondent to consider the petitioner's application for sabbatical leave beyond 16.03.2002 as he was completing his 64th year on the said date. Further it was submitted that the 1st and 2nd respondents had no authority to deviate from the conditions laid down in the University Grants Commission Circular No. 408 dated 20.10.1989, which deals with sabbatical leave to Teachers and Officers (P2). The Vice Chancellor of the 1st respon- 70 80

dent University submitted that the Council of the 1st respondent University at its 243rd meeting held on 13.06.2002 decided to permit the petitioner to avail himself of his sabbatical leave, subject to the condition that the petitioner reports back to work after he completes his 64th year (1R4, 1R5 and 1R5A). Further he had submitted that the irregular procedure of granting sabbatical leave to persons after they reached their 64th birthday was corrected by the 2nd respondent at their 603rd meeting and communicated by letter dated 22.05.2002 (1R6) and the previous practice of granting sabbatical leave to randomly identified University teachers was cancelled by the 2nd respondent as indicated in the said letter, which was sent to all Universities, Campuses and Institutes.

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Therefore the 1st respondent claims that it had acted on the advice of the 2nd respondent and therefore denied any violation of the petitioner's fundamental rights guaranteed in terms of Article 12(1) of the constitution.

In terms of clause 5(iii) of the University Grants Commission Circular No. 408 dated 20.10.1984 (P2), the categories of staff defined under clause 2 of the said circular would be entitled to sabbatical leave of one year's duration with pay, after 7 years of service. Clause 8 of the said Circular specifies that periods of sabbatical leave and/or the periods of service for sabbatical leave entitlement may be accumulated. Clause 5(b) of the said Circular also states that,

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"Sabbatical leave should terminate and the Teacher/Officer shall resume duties before the 64th birthday in the case of Teachers and before the 54th birthday in the case of others."

On the basis of the application made by the petitioner to the 1st respondent University dated 14.02.2001 (1R2) the said university forwarded such request along with the recommendation of the Council of the said University to the 2nd respondent for approval. Such recommendations of the 1st respondent was to the effect that the requested leave should be granted to the petitioner and was in the following terms:

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"වික්‍රමසිංහ මහනාගේ ඉල්ලීම සලකා බැලූ පාලක සභාව, උපකුලපති මහාචාර්ය ජේ. ඩබ්ලිව්. වික්‍රමසිංහ මහතා 2001.03.01 දින සිට ස්ථන වාර්ෂික නිවාඩු

සඳහා හිමිකම් ලබා ඇති බැවින් ඒ මඟනාව දෙවර්ෂයක වැටුප් සහිත නිවාඩු පාලන සභාව අනුමත කළාය. මහාචාර්ය වික්‍රමසිංහ මහතා 2003.03.16 වන දින වන විට වයස අවුරුදු 64 සම්පූර්ණ කරන බැවින් සහ උපකුලපති ධුර කාල සීමාව අවසානයේ මෙම නිවාඩුව ලබා ගැනීමට ඒ මඟනා අදහස් කරන හෙයින් මෙම සස්ත වාර්ෂික නිවාඩුව උපකුලපති ධුරය අවසන් වීමෙන් පසු ක්‍රියාත්මක කිරීම විශ්ව විද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාවේ අනුමැතිය සඳහා නිර්දේශ කළාය. 120

එබැවින්, ඉහත නිර්දේශය විශ්වවිද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාවේ අනුමැතිය සඳහා ඉදිරිපත් කරමි." (2R1)

In response to this communique' the 2nd respondent, by letter dated 04.06.2001, informed the 1st respondent of its decision regarding the request made by the petitioner in the following terms:

"Sabbatical leave – Prof. J.W. Wickramasinghe this has reference to your letter dated 15th March 2001, on the above sub- 130
ject.

The commission at its 588th meeting held on 30th April, 2001 has approved two years of sabbatical leave to Prof. J.W. wickramasinghe, Vice Chancellor, University of Sri Jayawardanapura with effect from 01.06.2002 **on special circumstances on relinquishing his duties as Vice Chancellor on 31.05.2002 by which time he would have reached the age of 63 years, notwithstanding the fact that in terms of para 5(b) of Commission Circular No. 408, sabbatical leave should terminate and the person concerned resume 140
duties before the 64th year (emphasis added).**"

Since issuing the aforementioned communique, the 2nd respondent by letter dated 22.05.2002, intimated to Vice Chancellors of Universities, Rectors of campuses and Directors of Institutes, a decision taken by the 2nd respondent pertaining to sabbatical leave to teachers, which was in the following terms (2R5):

"Sabbatical leave to teachers

Your kind attention is drawn to paragraph 5(b) of Commission Circular No. 408 dated 20th October 1989 issued in respect of 150
the above matter.

The Commission noted that certain Higher Educational Institutions seek approval of the University Grants

Commission to allow teachers/officers to avail themselves of sabbatical leave after their 64th/54th birthday, as the case may be, deviating from the above provisions of Commission Circular No. 408. The Commission therefore at its 603rd meeting decided to inform all Higher Educational Institutions that they should strictly adhere to the provisions of para 5(b) of the above Circular and that requests of this nature will not be entertained by the University Grants Commission in future (emphasis added).” 160

It is of importance to note that the aforementioned letter of the 2nd respondent was dated 22.05.2002 and it specifically referred to the fact that the said decision would be applicable only in the future. As referred to earlier, the petitioner's request was approved by the 2nd respondent at their 588th meeting held on 30.04.2001 and such decision was informed to the 1st respondent by letter dated 04.06.2001 (2R3). Such approval was given after considering the conditions stipulated in clause 5(b) of the Circular No. 408 dated 20.10.1989 and special circumstances the applicant had referred to in his application. 170

Notwithstanding the clear instructions given by the 2nd respondent, the 1st respondent decided to inquire from the 2nd respondent by letter dated 03.07.2002 (2R6) whether the decision conveyed by the 2nd respondent with regard to the petitioner's leave would be valid any longer on the basis of the decision taken by the 2nd respondent conveyed to the 1st respondent by letter dated 22.05.2002. There is no material placed before this Court by the 1st respondent, showing the reasons for the decision to place the already approved request for sabbatical leave of the petitioner, before the Council of the 1st respondent University and later communicating such decision to the 2nd respondent and querying whether its decision would still be valid. 180

This action of the 1st respondent is clearly without any basis. There was no requirement or a necessity for the 1st respondent to take any steps with regard to the approval given to the petitioner for him to be away on sabbatical leave. After writing to the 2nd respondent querying the leave already granted to the petitioner, the 1st respondent did not consider it necessary to await a reply from the 2nd respondent. Within a period of 3 weeks the 3rd respondent 190

wrote to the petitioner informing him that he has to report for work on 16.03.2003. This letter dated 24.07.2002 was in the following terms (1R5):

“වැටුප් සහිත විශේෂ නිවාඩු හා සජන වාර්ෂික නිවාඩු ඉහත කරුණ සම්බන්ධයෙන් ඔබ විසින් ඉදිරිපත් කරන ලද 2002.05.23 දිනැති ලිපිය හා බැඳේ.

02. 2002.06.13 දින පැවති මෙම විශ්වවිද්‍යාලයේ 243 වැනි පාලක සභාව විසින්, ඔබගේ 64 වැනි උපන් දිනයට ප්‍රථම සේවයට වාර්තා කිරීමට යටත්ව, 2002.06.01 දින සිට වැටුප් සහිත සජන වාර්ෂික නිවාඩු සහ කොමිෂන් සභා වනුලේඛ ලිපි සී/99/04 අනුව උපකුලපති ධුර කාලයෙන් පසු ලැබෙන මාස 03 ක විශේෂ නිවාඩුව 200 ලබාදීම අනුමත කර ඇති බව කරුණාවෙන් දැනුම් දෙමි. මේ අනුව 2003.03.16 දින ඔබ නැවත සේවයට වාර්තා කලයුතු බවත් මේ සම්බන්ධයෙන් ඔබ වෙත තිකුත් කරන ලද සමාක හා 2001.08.20 දිනැති ලිපිය මෙම ලිපියෙන් යටපත් වන බව ද කරුණාවෙන් සලකන්න.”

By virtue of this letter, the 1st respondent effectively rescinded the letter dated 20.08.2001, which intimated the decision of the 2nd respondent to the petitioner that he could utilise his 2 years of sabbatical leave with effect from 01.06.2002. While the 1st respondent had communicated its decision to the petitioner, the 2nd respondent, by letter dated 10.10.2002, informed the 1st respondent that as the approval for the petitioner's sabbatical leave was granted before the amendment letter which was issued on 22.05.2002, the initial decision pertaining to the petitioner would still be valid.

In the aforementioned circumstances, it is surprising to note that the 1st respondent notwithstanding the clear instructions given by the 2nd respondent that their decision will be applicable only to future applicants, decided to inform the petitioner, without even awaiting a reply to their letter by which they sought a clarification.

It is common ground that sabbatical leave to Teachers and Officers of Universities is governed by UGC Circular No. 408 (2R4). It is also common ground that when by letter dated 15.03.2001 the 1st respondent sought approval of the 2nd respondent for two years sabbatical leave for the petitioner (2R1), the 2nd respondent had approved it on 30.04.2001 and had conveyed the said decision to the 1st respondent on 04.06.2001. The 2nd respondent by letter dated 10.10.2002, replied the 1st respondent stating that ‘the petitioner's sabbatical leave continued to be

approved as the decision regarding his sabbatical leave had been taken prior to the communication dated 22.05.2002' (2R7). 230

It is therefore abundantly clear that the improper decision conveyed to the petitioner by letter dated 24.07.2002 (1R5) restricting the petitioner's sabbatical leave, was taken by the 1st respondent, not only arbitrarily, but also without any basis.

Considering the totality of the circumstances of this application, it is clear that the petitioner belonged to a group where sabbatical leave had been given to be enjoyed beyond the age of 64 years. Such leave was granted to the petitioner not by the 1st respondent University, but by the 2nd respondent Commission, which is the ultimate authority for such purpose. After all sabbatical leave is granted under, and governed by the UGC Circular No. 408 dated 20.10.1989 (as amended). In such circumstance, the 1st respondent had no authority to issue the letter dated 24.02.2002 and thereby had clearly acted **arbitrarily**. 240

Such action means that the decision has been influenced by extraneous consideration, which the relevant authority should not have considered. When an act is arbitrary it is implicit that such action is unequal and therefore violative of Article 12(1) of the Constitution which guarantees equality and equal protection of the law. Commenting on the concept of equal protection of laws and constitutional guarantee against arbitrariness Bhagwati, J., in *E.P. Royappa v State of Tamil Nadu*⁽¹⁾ stated that, 250

"Equally is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined' within traditional and doctrinate limits. From a positivistic point of view equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies: one belongs to the rule of law in a republic while the other to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and therefore it is violative of Article 14..." 260

After the conclusion of the hearing and after the petitioner had filed his written submissions, the 1st respondent had filed a motion dated 20.10.2003. By that motion the 1st respondent stated that,

the 1st respondent University is in agreement to grant the following reliefs to the petitioner, namely, to set aside the decision to revoke the original decision and to grant sabbatical leave to the petitioner with full pay from 01st June 2002 till 31st May 2004.

The petitioner thereafter submitted that he did not wish to enter 270 into a settlement on that basis with the 1st respondent, as he could not go abroad using his sabbatical leave due to the actions of the respondents and the reliefs suggested in the motion filed by the 1st respondent would not be of any use to him.

It is to be noted that the petitioner had to invoke the jurisdiction of this Court, in order to be on sabbatical leave and had to obtain an interim order so that he could enjoy his sabbatical leave beyond 16.03.2003.

On a consideration of all the circumstances of this case, the motion filed by the 1st respondent is rejected and I declare that the 280 1st respondent University has violated the petitioner's fundamental rights guaranteed in terms of Article 12(1) of the Constitution. The decision of the 1st respondent University to revoke the original decision to grant the petitioner sabbatical leave with full pay from 01.06.2002 till 31.05.2004 is set aside and I direct the respondents to permit the petitioner to be on sabbatical leave with full pay until 31.05.2004, which is in compliance with the decision of the 2nd respondent dated 10.10.2002 (2R7).

The 1st respondent University is also directed to pay to the petitioner a sum of Rs. 25,000/- as compensation and costs. This 290 amount to be paid within 3 months from today.

EDUSSURIYA, J. - I agree.
DE SILVA, J. - I agree.