

ALMEIDA
v.
CEYLON FISHERIES CORPORATION
AND OTHERS

SUPREME COURT
DHEERARATNE, J.,
ANANDACOOMARASWAMY, J. AND
GUNASEKERA, J.
S.C. APPLICATION NO. 310/97 (FR)
MAY 13, 1998.

Fundamental rights – Refusal to grant an extension of service – Discretion of the appointing authority – Art. 12 (1) of the Constitution.

The petitioner was the Marketing Manager of the 1st respondent corporation. On reaching the age of 55 years which was the age of optional retirement, he applied for an extension of service for one year. The petitioner's application was rejected by the Board of Directors of the 1st respondent corporation having regard to the fact that there was a criminal prosecution pending against the petitioner and that his service was not indispensable.

Held:

There was a discretion vested in the Board of the 1st respondent corporation to grant or refuse an extension of service after an officer reached the optional age of retirement. The decision of the Board to refuse an extension of service to the petitioner could not be said to be arbitrary or capricious and violative of Article 12 of the Constitution.

APPLICATION for relief for infringement of fundamental rights.

Upul Jayasuriya with P. Radhakrishnan for petitioner.

Shavindra Fernando SSC for Attorney-General.

Cur. adv. vult.

June 8, 1998.

GUNASEKERA, J.

The petitioner who was the Marketing Manager of the 1st respondent Corporation complains of the violation of his fundamental rights guaranteed under Articles 12 (1) and 12 (2) of the Constitution by the Corporation's refusal to grant him an extension of service for one year from 1.1.97 on his reaching the age of 55 years.

The petitioner had been appointed to the post of Marketing Officer in Grade IX of the Fisheries Corporation with effect from 26.7.1965 by a letter of appointment marked 'P1'. Over the years he had been promoted to higher grades and had been appointed to the post of Marketing Manager, Grade I, with effect from 1.11.1986 by a letter of appointment 'P3' dated 11.11.1986 and thereafter had been promoted to a special grade executive post with effect from 1.1.1996 by letter 'P4'.

It is to be noted that none of the letters 'P1', 'P3' & 'P4' specify an age of retirement but however, 'P4' & 'P3' refer to the terms and conditions specified in the original letter of appointment 'P1'. Clause 2 of 'P1' issued to the petitioner *inter alia* states: "you will be subjected to the administrative, financial and disciplinary Orders of the Corporation and any other Orders issued from time to time by or on behalf of the Board" and Clause 16 states: "after you are confirmed in your appointment your employment is terminable on the giving of three months' written notice or on the appointment of three months' salary in lieu thereof on either side".

By a notice dated 19.3.1996 marked 'P5' the 4th respondent had notified all Staff Officers who intended to continue in service in the 1st respondent Corporation after attaining 55 years of age to forward a request indicating their desire to continue in service 6 months prior to reaching 55 years. Since the petitioner would have reached 55 years

of age on 1.1.97 he had by letter 'P6' dated 2.6.96 requested that he be granted an extension of service for one year from 1.1.97. The petitioner had been informed by the 4th respondent by 'P7' dated 14.11.96 that his application for an extension of service after 55 years was rejected consequent upon a policy decision taken by the Board of Directors of the 1st respondent Corporation and that steps would be taken to treat him as being retired from 1.1.97. The petitioner states that subsequently by an internal circular No. 97-01 dated 15.1.97 marked 'P9' that the Common Policy Decision of the Board of Directors of the 1st respondent Corporation not to engage employees whomsoever beyond the age of 55 years was amended to fall in line with a Secretarial Division Circular No. SEC 131/1 dated 26.10.65 marked 'P8' according to which the Board had decided that the age of retirement of employees of the 1st respondent Corporation should be (1) 55 years for optional retirement and (2) 60 years for compulsory retirement.

It was contended for and on behalf of the petitioner that Circular 'P9' further provided that those employees who had been retired on reaching the age of 55 years between December, 1996 and January, 1997 could make an application for an extension of service for the consideration by the Board, and in consequence of that provision that the petitioner applied for an extension of service for one year by his letter dated 16.1.1997 marked 'P10' and that his request for an extension of service was rejected by the 2nd respondent by letter dated 24.2.97 marked 'P2'.

It was urged by learned counsel for the petitioner that the rejection of the application of the petitioner for an extension of service by one year from 1.1.97 was violative of the provisions of Articles 12 (1) and 12 (2) of the Constitution since the rejection was capricious and discriminatory. It was submitted on behalf of the petitioner that during his long period of service of over 30 years that he had not been found wanting in respect of any aspect of his work and had a reasonable expectation of securing an extension of service after reaching the age of 55. Further it was contended that the petitioner had been exonerated by the Inquiring Officer who had held a disciplinary inquiry in 1991 and notwithstanding the fact that the petitioner had a case No. B 274/94 in the Magistrate's Court of Anuradhapura which never got off the ground that he was promoted to a special grade executive post with effect from 1.1.96.

Learned Senior State Counsel appearing for the respondents submitted that the Board at its 725th Board Meeting held on 2.9.96 considered the question of granting extension of service to its

employees who had reached the optional age of retirement (55 years) and decided that extension of service beyond the optional age of retirement would be considered only in the case of employees who had a satisfactory past record of service and whose services were indispensable. A copy of the said Board decision had been filed along with the affidavit of the 4th respondent marked '4R1'. In the case of the petitioner it was submitted that the Board had considered his application for an extension of service after 55 years and refused to accede to his request since a criminal prosecution relating to forgery was pending in the Magistrate's Court and that his services were not indispensable. A copy of the said Board decision dated 18.2.97 had been produced marked 'X' along with a further affidavit of the 4th respondent dated 28.10.97.

Although the petitioner has referred to several persons whose services have been extended after reaching the optional age of retirement in paragraph 25 of the petition the respondent's position is that two of them, namely Titus and Weeraratne, had been granted extensions of service prior to the Board decision '4R1' and Nandasiri Gunaratne and Podi Appuhamy had not been granted extensions as averred by the petitioner. That the others have been granted extensions of service on the basis that their services were indispensable in accordance with the circular '4R1'.

On a consideration of the documents filed it appears that there is a discretion vested in the Board of the 1st respondent Corporation to grant or to refuse an extension of service after an officer reaches the optional age of retirement. The discretion is to be exercised within the framework of the principles laid down in the Board decision marked '4R1'. In the instant case after a consideration of the application for the extension of the services of the petitioner the Board having had regard to the fact that there was a criminal prosecution pending against the petitioner and on account of the fact that his services were not indispensable has refused to exercise the discretion in his favour and intimated the said decision by letter marked 'P2' dated 24.2.97. The said decision, in my view, cannot be said to be arbitrary or capricious. Accordingly, the petitioner's application is dismissed without costs.

DHEERARATNE, J. – I agree.

ANANDACOOMARASWAMY, – I agree.

Application dismissed.