

DR. AJANTHA WIJESINGHE PERERA  
v.  
UNIVERSITY OF COLOMBO AND OTHERS

SUPREME COURT  
AMERASINGHE, J.,  
WADUGODAPITIYA, J.,  
GUNAWARDANA, J.,  
S.C. F.R. NO. 738/96  
SEPTEMBER 23, 1998.

*Fundamental Rights – Termination of Services – Article 12 (1) – Repeated warnings re – work and conduct.*

The petitioner was repeatedly and in the clearest of terms both in writing and orally warned that her work and conduct were less than satisfactory in several specified ways. She was given the option of resigning which she refused. The procedures adopted by the university were adequate and fair and there was no violation of petitioner's fundamental rights.

APPLICATION for relief for alleged infringement of fundamental rights.

*Faiz Mustapha, PC with Dr. Jayampathi Wickremaratne, Gaston Jayakody and S. Felix for petitioner.*

*R. K. W. Goonesekera with Ms. Shiranthi Jayatilake for respondents.*

*Cur. adv. vult.*

January 27, 1999.

AMERASINGHE, J.

The petitioner was employed with effect from the 24th of May, 1993 by the University of Colombo as a Senior Lecturer, Grade II, in Zoology upon her accepting the terms and conditions set out in her letter of appointment. Clause 2 of the petitioner's letter of appointment stated that the post was permanent and that, unless the appointment was

terminated earlier, she would be on probation for a period of three years or more in case it was considered expedient to extend the period of probation. Clause 9 of the letter stated, *inter alia*, that if her services were unsatisfactory while she was on probation, she was liable to be discontinued at any time during the period of probation or at the end of it. Clause 12 of the letter stated: "Your appointment is a whole-time appointment and you should not accept any other paid employment without the prior permission of the Vice-Chancellor". Clause 13 of the letter stated that it was her duty under the general direction of the Head of Department to conduct such classes, give such lectures and perform such other teaching duties as may be necessary, assist in the conduct of examinations (eg setting, marking, supervision and invigilation), assist in the supervision and inspection of the work of special or postgraduate students and do all in your power to promote by research and otherwise, the advancement of your subject.

On July 13, 1994, the Vice-Chancellor wrote to the petitioner stating that the annual salary increment ordinarily due after her first year of service had been suspended for a period of six months for the following reasons:

- (1) You are not available in the department when required for consultation for departmental matters.
- (2) You are involved in outside activities without permission.
- (3) Although you have been warned a number of times that departmental work must take priority and you must get prior permission to be away from the department for outside work, you continue to be away from the department for outside work without prior permission."

The Vice-Chancellor was, no doubt, acting on the advice and information furnished to him by the petitioner's Head of Department who had warned her verbally against undertaking work outside the University without his permission. (vide paragraphs 11 and 12 of the affidavit of the third respondent, who was the Head of Department, dated the 7th of February, 1997).

The petitioner responded by her letter dated October 10, 1994, wherein she stated that she neither requested the decision taken to be changed nor did she "accuse any persons for the decision". The petitioner proceeded to describe her numerous activities outside her work as a University lecturer and stated: "I do not know how many occasions I have been away from the Department when I have been required for consultation of Departmental work as even now I need to be away from the Department to visit other institutions among which are CISIR, the Central Environmental Authority, NARESA and other Universities as well".

The petitioner stated in paragraph 13 of her affidavit of the 13th of November, 1996, that "whenever" she had to be away she had "always informed Prof. Arudpragasam or the third respondent either in writing or orally". The petitioner produced a letter dated the 18th of January, 1997, to the Vice-Chancellor and an affidavit dated the 16th of April, 1997. In these documents Dr. Arudpragasam does not support the petitioner's contention that he was informed when the petitioner undertook outside work. What Dr. Arudpragasam did say was this: "Involvement in consultancy work is a dangerous path to tread upon. If Dr. Perera is guilty of error there, there are hundreds of others in the University system who must be brought into the net and treated with equal harshness, as Dr. Perera has been treated". The Head of Department, Professor W. D. Ratnasooriya, in his affidavit dated the 7th of February, 1997, stated that although the petitioner had informed him of her outside activities on some occasions, "there were many occasions where she engaged in such activities without my prior permission as Head of the Department and that I had warned her verbally".

Although in paragraph 15 of her affidavit dated 13 November, 1996, the petitioner states that she replied the Vice-Chancellor "denying the allegations contained in his letters" and assumed that her "explanation had been accepted", because she received no reply, it seems to me that what she did was to accept the charges and therefore no further response from the Vice-Chancellor was necessary. This, it seems was

the way in which the Vice-Chancellor, acting on the advice of the Head of Department, saw it, and correctly, in my view. In her reply to the Vice-Chancellor the petitioner did not contest the allegations made against her. She was merely trying, she said, to "present a correct picture" of herself. What she did was to present herself as a person heavily involved in activities outside her work as a university lecturer.

The petitioner's letter has been submitted direct to the Vice-Chancellor and not through her Head of Department. However, the petitioner's letter was sent by the Vice-Chancellor to the Head of the Department for his observations. The Head of the Department in his letter dated the 1st of November, 1994, expressed the view that the petitioner admitted "heavy outside commitments" which, in his opinion, had "badly affected" the work of the Department. Moreover, he observed, the outside activities had been performed without the approval of the relevant authorities of the University. The petitioner, he said, had undertaken consultancy work without the required permission of the University. The Head of Department concluded that he deemed it "justifiable" that the petitioner's annual increment had been suspended.

Reference might also be made to the minutes of the Departmental Committee Meeting held on October 22 1993 (see also paragraph 13 of the affidavit of the third respondent) wherein it is stated that the petitioner had apologized to the Head of Department for failing to submit the lecture and practicals schedule for 1993. This was, in my view, an acceptance of the fact that the petitioner had been found wanting as far as her work as a lecturer was concerned, however important or useful she may have considered her other work to be. It is also recorded that at that meeting the Dean of her faculty had stated that while the participation of departmental staff in consultancy work was welcome, it could "only be done with the approval of the proper authority". It was submitted on behalf of the petitioner that the terms of clause 12 of her letter of appointment merely prohibited other paid employment whereas the petitioner's outside activities were of a voluntary nature. Clause 13 however made it clear that the petitioner

was subject to the general direction of the Head of her Department. As we have seen her Head of Department had required her to desist from outside activities, for the reason that in his view it adversely affected her work as a lecturer. Moreover, the petitioner was, as we shall see, unable to give an assurance that her outside work could not adversely affect her work as a university lecturer.

In my view, the petitioner is untruthful when she states in paragraph 13 of her affidavit that she had "never been warned about being away without prior permission". She was present at the Departmental meeting and, like everyone else present at that meeting, she was notified of what was required of persons intending to do consultancy work and put on guard and given cautionary notice with regard to such work. Nor is the submission that she had pointed out that "the so-called outside work connected with research activities which she was obliged to undertake under and in terms of clause 13 of her letter of appointment" borne out by the evidence. Significantly, this is not an explanation she offered at any time during her tenure as a lecturer.

On July 7, 1995, the Vice-Chancellor wrote to the petitioner stating that it had been brought to his notice that she was (1) still "involved in outside activities without prior permission" and that (2) her "commitments towards teaching" was poor. The Vice-Chancellor went on to state as follows: "As you have shown no improvement in your work, your increment has been suspended by a further period of six months. Please note that if you do not show any improvement in your work and conduct, this suspension will be converted to a deferment".

The petitioner in her letter to the Vice-Chancellor dated the 14th of July, 1995, stated that although her salary increment had been denied on two occasions yet she had not been given "details of the accusations but only general statements". She demanded details. The demand was repeated in her letter of August, 1995. On August 3, 1995, the Vice-Chancellor in his letter to the petitioner drew attention to his letters dated July, 13, 1994, with regard to the first suspension, and to his letter of July 7, 1995, with regard to the second suspension

and pointed out that he had summarized the reasons for the suspensions. He added as follows : "In a series of discussions I had with you, the last one being in the early part of this week, I have indicated to you in detail the circumstances which led to these decisions and I have also advised you on proper University procedures expected of you. Under these circumstances, I do not see any reason for writing you a detailed letter on the subject. I hope you will act according to my advice on required procedural practices".

The petitioner's problem was not that she was unaware of the increments but that she was anxious to act as she pleased in undertaking assignments outside her role as a University lecturer. She supposed that she had to follow other pursuits and suspected that the restrictions sought to be imposed on her activities were improperly motivated. In her letter to the Vice-Chancellor dated the 14th of July, 1995, she stated as follows: "As you are fully aware I am at present involved in solving one of the major problems in the country ie, the management of solid waste which is causing hazard to human health. I do this because I love my country and wish to help my people. I have held workshops, given lectures even at shanties and continue to advice whoever is responsible in order to solve this problem to a certain extent. If my work bring out jealousy among my co-workers in the department or in the institution I cannot be responsible for their feelings. I have always worked well in the field of environmental sciences for which I was given the responsibilities not so much from the people inside of the university, but people outside the University".

The petitioner's difficulties arose from competing interests and mixed up priorities. What the petitioner failed to appreciate was the fact that as long as she wished to serve as a university lecturer her responsibilities had to be determined by the "people inside the university". It was, in terms of clause 13 of her letter of appointment, her duty to act under the direction of the Head of her department. However important she may have considered her other work to be, her duty was to ensure that it did not interfere with her work as a University lecturer. And with regard to that matter, her Head of Department in

his affidavit (paragraph 16) stated: "I reiterate that the petitioner's many outside activities did affect her University work".

In her letter dated August 4, 1995, the petitioner wrote to the Vice-Chancellor setting out projects she intended undertaking outside her University work and sought the permission of the Council to carry out those activities (3R3). The Vice-Chancellor sought the views of the Head of her Department on the question whether permission could be granted without prejudice to her commitments. The minutes on the letter make it clear that he was not in a position to recommend the application, adding: "I still find she does not take the work of Dept. seriously". On the 4th of September, 1995, the Dean of the Faculty of Science wrote to the petitioner that he could recommend her application to the Vice-Chancellor for permission to undertake the outside work referred by her in her letter of 4 September, 1995, only if he was convinced that her "involvement mentioned in the activities will in no way be prejudicial to [her] commitments to the Department of Zoology". He therefore sought a guarantee from the petitioner that the activities will in "no way interfere with [her] commitments to the Department of Zoology, Faculty of Science and University of Colombo as a whole". The petitioner makes no mention of the Dean's letter, nor is it in evidence that she responded to it. The Dean's letter is of importance because it clearly shows what the University's concerns were and dispels the suggestion of ulterior motives referred to by the petitioner, for instance, in her letter of March 8, 1996.

On November 2, 1995, the Vice-Chancellor wrote to the petitioner stating that, since there had been no improvement in her work and conduct during the period following the suspension of her increments, the Council had, as it had earlier warned, decided to defer her salary increment ordinarily due on May 24, 1994, for the following reasons:

1. Irresponsibility in examination matters such as frequent delays in marking of answer scripts, careless and erratic behaviour in marking scripts and carelessness in the preparation of question papers.

2. Insubordination, non-co-operation and failure to carry out instructions of the Head of Department regarding official departmental matters.
3. Involvement in outside activities without prior permission.
4. Creating unnecessary problems for the management of the Department".

The petitioner was informed that the council had also decided to suspend the salary increments ordinarily due on May 24, 1995, by a period of six months and to review her conduct in respect of official matters in November, 1995, to determine what course of action was to be taken in regard to her contract of employment with the University.

According to the minutes of the meeting of the University council held on April 10, 1996, "after a lengthy discussion", it was decided that the petitioner should be required to show cause as to why her services should not be terminated.

On February 29, 1996, the Vice-Chancellor wrote to the petitioner recalling the previous history of the suspension and deferment of annual salary increment and stating that there had been no improvement in her work and conduct. The Vice-Chancellor stated that the council had at its meeting decided to call for her explanation as to why her services should not be terminated "for the following reasons, *inter alia*":

"Irresponsibility in examination matters: –

- (a) Delays in marking answer scripts. As a result the release of results in an examination was delayed and a separate Board Meeting had been held only for Zoology.
- (b) Erratic and careless marking. In some instances marks have been given more than what is allocated in the marking scheme.



On some occasions marks have been allocated to answers crossed off by the candidate.

- (c) Setting questions in a practical paper on subjects which were not taught by you but by another lecturer. As a result the same specimen has been given in 02 spots in the same examination.
  - (d) Irresponsibility in handling the packets of answer scripts. Packets were handed over to other examiners by you without enclosing copies of the question paper which had also contributed to the delay in releasing marks.
2. Involvement in outside activities without prior permission. Undertaking lectures in another University without prior permission from the Vice-Chancellor.
  3. Not responding to letters addressed to you by the Head of the Department."

The petitioner responded in her letter dated March 8, 1996. The letter of the petitioner and the observations of the Head of her Department were referred to by the Chairman at a meeting of the University council held on April 10 1996. Because it was "a complicated matter and the relevant material was too extensive for the entire council to handle", it was decided to appoint Dr. C. S. Weeraratne, a member of the council, to look into all aspects of the case and report to the council. This decision was conveyed to the petitioner by the Vice-Chancellor in his letter dated April 19, 1996.

Discussions were held between the petitioner and Dr. Weeraratne on April 18 and the petitioner in her letter dated April 23, 1996, provided Dr. Weeraratne with further information.

In the meantime, the council decided to extend the petitioner's period of probation by a period of six months with effect from May, 24, 1996. Having considered the report of Dr. Weeraratne, the petitioner

was informed by the Vice-Chancellor in his letter dated May 17, 1996, that her performance in teaching, examination work and involvement in activities outside the University would be closely monitored during the extended period of probation. The petitioner was warned that, if no improvement was shown during that period, action would be taken in terms of clause 9 of the letter of appointment to discontinue her services.

The petitioner in her letter of May 27, 1996, to the Vice-Chancellor protested against the decision of the council to extend her period of probation and she alleged that her salary increment had been "stopped for no rhyme or reason", and that the extension to the period of probation was made "*mala fide*, without proper inquiry and findings". The petitioner's letter and other correspondence was tabled at a meeting of the council on July 10, 1996. A report from the Head of the Department of Zoology relating to the petitioner's unsatisfactory performance in the matter of marking answer scripts was also tabled. The council decided to appoint the Professor of Biochemistry of the University of Colombo and the Professor of Zoology of the University of Sri Jayewardenepura to report on the complaint of the Head of the Department of Zoology. At a meeting of the council held on August 14, 1996, the Dean of the Faculty of Science reported that there had been "no improvement in Dr. (Mrs.) Perera's attitude towards work as she had delayed marking answer scripts again". The reports of the Professor of Zoology, Sri Jayewardenepura, and the Professor of Biochemistry of the University of Colombo, as well as a report from the second examiner on Comparative Anatomy were tabled at a meeting of the council on September 11, 1996. It was evident that their opinions of the petitioner as an examiner were unfavourable. According to the minutes of the meeting, the council decided that, since the petitioner had shown no improvement, her services should be terminated. The council, however, was of the view that the Vice-Chancellor, the Dean of the Faculty of Science and the Head of the Department of Zoology should meet the petitioner, explain her deficiencies, and offer her the option of resignation. The meeting was held on September 20, 1996. The Vice-Chancellor traced the history

of the case, referring letter by letter to the correspondence with the petitioner. The petitioner was unwilling to resign. The Vice-Chancellor requested her to think over the matter and inform him so that her decision could be conveyed to the council. The petitioner's position remained unchanged. The council at its meeting on October 9, 1996, decided to terminate the services of the petitioner, and that decision was conveyed to her by the Vice-Chancellor's letter dated October 11, 1996.

On the 13 of November, 1996, the petitioner made an application to this court alleging that her fundamental rights guaranteed by Article 12 (1) of the Constitution had been violated by the respondents and praying, *inter alia*, for a declaration that the decision of the University council taken on the 9th of October, 1996, to terminate her services as a lecturer was null and void. Leave to proceed was granted on the 20th of November, 1996.

Having regard to the facts set out above, I find it impossible to hold that the petitioner was treated in an arbitrary or unfair manner or that the decision to terminate her services was without foundation or that her case had not been considered after due inquiry. The petitioner was repeatedly and in the clearest of terms both in writing and orally warned that her work and conduct were less than satisfactory in several specified ways. The petitioner's work and conduct was evaluated by the University council from time to time after lengthy discussions on the basis of reports not only from the Head of her Department and the Dean of her Faculty but also others including Dr. Weeraratne and two professors, one of whom was from another University. The procedures adopted by the University were in my view adequate and fair. I therefore hold that the termination of her services was not in violation of Article 12 (1) of the Constitution. The petition is dismissed without costs.

**WADUGODAPITIYA, J.** – I agree.

**GUNAWARDANA, J.** – I agree.

*Petition dismissed.*