NATIONAL SAVINGS BANK
V.
CHANDRASIRI

COURT OF APPEAL,
WIJETUNGA, J., AND
WIJEYARATNE, J.,
C.A. NO. 708/80(F),
D.C. COLOMBO NO. 3368/Z,
OCTOBER 16, 1989

Contract - Offer to group and acceptance - Repudiation unilaterally by offeror - Declaratory action - Mandamus.

The plaintiff was employed in Grade VI of the defendant Bank. Applications for promotion to Grade IV from Grade V/VI of the banks service were called for to fill 94 vacancies. The

requirements for being called for interview were 50 marks at a written test. The plaintiff and 75 others obtained over 50 marks. The bank however called for the interview 64 candidates who had scored less than 50 marks and 7 candidates who had scored less than 40 marks. The plaintiff was also called. On 28.01.1980 the Bank announced the promotion of 66 candidates and in this number were included candidates who had scored less than 50 and even less than 40. The plaintiff though 28th in the test was not called. The plaintiff sought a declaration that the decision of the Bank was wrongful and unlawful. The Bank contended that no actionable wrong had been suffered by the plaintiff and that the plaint did not disclose a cause of action.

Held:

(1) The plaintiff having accepted the defendants offer to its employees as regards promotion to Grade IV by sitting the competitive examination and presenting himself for the interview, had a vested contractual right to have his candidature for promotion to that Grade to be evaluated on the terms and conditions intimated to the employers by the defendant. It was not open to the defendant to unilaterally repudiate such right by promoting persons in disregard of the criteria set out in the offer so made.

(2) A suit for a declaration was appropriate. Mandamus was not the proper remedy.

Cases referred to:

(1) *Carlill* v. *Carbolic Smoke Ball Company* (1893) 1 QB 256
(2) *Shipton* v. *Cardiff Corporation* 1917 87 LJKB 51
(3) *Clarke* v. *Dunraven* (1897) AC 59
(4) *Perera* v. *The People's Bank* 78 NLR 259
(5) *Ranasinghe* v. *The Ceylon State Mortgage Bank* (1981) 1 Sri LR 121
(6) *Weligama Multipurpose Co-operative Society Ltd.* v. *Daluwatta* (1984) 1 Sri LR 195.
(7) *Hakmana Multipurpose Co-operative Society Ltd.* v. *Fernando* (1985) 2 Sri LR 272.

APPEAL from Judgment of the District Court of Colombo.

Bimal Rajapaksa with *Piyatissa Rajapakse* for defendant - appellant.
Chula de Silva, P.C. with *Gomin Dayasiri* for plaintiff - respondent.

Cur. adv. vult.

August 24, 1990

WIJETUNGA, J.

The plaintiff joined the service of the defendant Bank on or about 20.07.74 and was appointed to Grade VI of the Bank's service on 20.01.75.

The defendant Bank, by a circular dated 7.06.79 (P.1), called for applications for promotion to Grade IV from employees in Grades V/ VI of the Bank's service. The scheme of promotion was set out by the Bank in a notice dated 15.06.79 (P.3) which stated inter alia that the candidates will be tested at a written examination which carries 100 marks, to be held in August, 1979 and that those who obtain 50 marks and over will be summoned for an interview which will carry 100 marks

Accordingly, the plaintiff submitted an application for promotion to Grade IV, sat the aforesaid written examination, obtained over 50 marks and was called for interview. The plaintiff states that there were 94 vacancies in Grade IV and 76 candidates who obtained over 50 marks were called for interview. He further states that the Bank also called for interview 64 candidates who had obtained over 40 marks and 7 candidates who had obtained even less than 40 marks.

On or about 28.01.1980, the Bank by a circular (P.8) announced that 66 candidates had been promoted to Grade IV and will receive their letters of appointment in due course. The plaintiff states that the said 66 candidates included persons who had obtained less than 50 and even less than 40 marks at the written examination but the plaintiff who had obtained over 50 marks at the examination had not been promoted to Grade IV. He claims that the decision of the defendant Bank to consider for promotion to Grade IV, candidates who had failed to obtain 50 marks at the said examination is wrongful and unlawful and seeks inter alia a declaration that the decision to promote the 66 candidates referred to in (P.8) is wrongful and unlawful and a permanent injunction restraining the defendant Bank from implementing the said decision and issuing letters of appointment to the said 66 candidates.

The defendant, in its answer, raised inter alia a preliminary objection that on the face of the averments contained in the plaint, no actionable wrong has been suffered by the plaintiff and that the plaint does not disclose a cause of action in law. It, therefore, prayed that the plaintiff's action be dismissed with costs.

The case went to trial on several issues and the learned District Judge entered judgment for the plaintiff, with costs, in terms of paras (a) and (b) of the prayer to the plaint but subject to certain directions regarding the promotion of candidates. It is from this judgment and decree that the defendant has appealed to this Court.

While learned counsel for the defendant-appellant argued that the plaintiff had suffered no actionable wrong in that he had no legal right to selection or promotion, learned counsel for the plaintiff-respondent submitted that in law the notices (P.1) and (P.5) constituted an offer and that the plaintiff by sitting the competitive examination and presenting himself for an interview accepted the said offer, which consequently became a binding contract between the parties. Thus, there came into existence a contractual

right for the plaintiff to be promoted to Grade IV since he had been placed 28th in order of merit. The defendant could not, therefore, have acted in breach of those contractual rights.

The case of *Carlill* v. *Carbolic Smoke Ball Company,* (1) is authority for the proposition that the performance of the condition constitutes acceptance. In the instant case, the plaintiff had performed the condition by sitting the examination and presenting himself for the interview.

Weeramantry in his "Law of Contracts" (1967 Ed. Vol. 1) dealing with the question of acceptance of an offer made to a class of persons gives the example at page 120 of a resolution by a corporation, on the out-break of war, to pay any of its servants who might volunteer and be accepted for military service, such sums as would take up, together with his army pay, the amount of his full salary or wages, to be an offer which, on acceptance by the employee enlisting, becomes a contract - *Shipton* v. *Cardiff Corp.* (2)

He also refers at page 125 to the well-known example of acceptance by conduct furnished by the case of *Clarke* v. *Dunraven,* (3) where the members of a yacht club entering a yacht race and undertaking to be bound by the sailing rules of the club was held to be conduct by which a contract was entered into between the members.

He makes the observation at page 120 that it is quite plain that an offer becomes irrevocable upon acceptance and a binding contract thereupon springs into existence and the offer cannot thereafter be withdrawn.

In any view, therefore, the plaintiff having accepted the defendant's offer to its employees as regards promotion to Grade IV by sitting the competitive examination and presenting himself for the interview, had a vested contractual right to have his candidature for promotion to that grade to be evaluated on the terms and conditions intimated to the employees by the defendant. It was not open to the defendant to unilaterally repudiate such right by promoting persons in disregard of the criteria set out in the offer so made. The learned trial judge was, therefore, right when he came to the conclusion that the said decision of the defendent Bank was wrongful and unlawful.

The next question urged by learned counsel for the appellant was that the Court had no jurisdiction to enter a declaratory decree against the defendant. He relied on the case of *Perera* v. *The People's Bank,* (4)

where the Supreme Court held that the District Court has no jurisdiction to grant a declaration in a regular action, where such declaration is sought as a supervisory remedy to challenge the validity of a judicial or quasi judicial determination made by a statutory authority and that where it is sought to question such determination, the appropriate remedy is to invoke the supervisory jurisdiction of the Supreme Court by way of a writ of Certiorari.

But this case, among others, was considered in *Ranasinghe* v. *The Ceylon State Mortgage Bank* (5), where the Supreme Court (Samarakoon CJ. with 3 other judges agreeing) held that the plaintiff was entitled in law to maintain an action for a declaration and that Section 217 (C) of the Civil Procedure Code permits a declaratory judgment without granting any substantive relief or remedy and a declaration granted under these provisions cannot correctly be termed a "supervisory order" in as much as there is no order in the first place and secondly it is not a judgment that the machinery of the law could enforce. If the term "supervisory" in reference to a declaratory judgment is intended to describe the function of review that must necessarily take place before a Court pronounces upon the legality or otherwise of a decision of a body such as an inferior tribunal, then such exercise is not forbidden by law.

In any event, it seems to me that it was not open to the plaintiff in the instant case to have sought relief from this Court by way of a writ as the matter did not concern the performance of a public duty where the plaintiff had a sufficient legal interest.

In *Weligama Multipurpose Co-operative Society Ltd.*, v. *Daluwatta*, (6), where the petitioner - respondent was employed as the Manager of the appellant Co-operative Society until his interdiction and he filed an application seeking a writ of mandamus compelling the appellant Society to pay his half month's salary from the seventh month of interdiction in terms of the provisions of a circular issued by the Co-operative Employees' Commission which stated that an interdicted employee was entitled to such payment pending conclusion of the inquiry against him, it was held by a bench of five judges of the Supreme Court that Mandamus lies to secure the performance of a public duty in the performance of which an applicant has sufficient legal interest and to be enforceable by Mandamus, the duty to be performed must be of a public nature and not of a merely private character.

In that case it was further stated at page 199 that "the Writ will not issue for private purpose, that is to say, for the enforcement of a mere private duty stemming from a contract or otherwise. Contractual duties are enforceable by the ordinary contractual remedies such as damages, specific performance or injunction. They are not enforceable by Mandamus which is confined to public duties and is not granted wher there are other adequate remedies".

So also in *Hakmana Multipurpose Co-operative Society Ltd.*, v. *Fernando*, (7), the Supreme Court in an application relating to a similar provision contained in a circular issued by the Co-operative Employees' Commission held that the duty prescribed by the relevant provisions of that circular was but in the nature of a public duty such as could attract relief by way of Mandamus.

In the instant case too, the rights of the plaintiff claimed to have been violated by the defendant are not of a public nature but are vested contractual rights and in my view the plaintiff has sought the correct remedy.

In any event, on the authority of *Ranasinghe* v. *The Ceylon State Mortgage Bank* (supra), the plaintiff was entitled to bring a declaratory action, in the circumstances of this case.

With regard to the appellant's submission that the learned District Judge had granted relief which has not been prayed for in the plaint, suffice it to say that the Court having granted the declaration and the injunction prayed for in the plaint, has merely ensured for the defendant a certain degree of flexibility in regard to the promotions of the other employees.

It was further contended by learned counsel for the appallent that all 66 persons who were selected for promotion should have been made defendants in this action. I am unable to agree with this submission. The term "cause of action" has been defined in section 5 of the Civil Procedure Code as "the wrong for the prevention or redress of which an action may be brought, and includes the denial of a right, the refusal to fulfil an obligation, the neglect to perform a duty, and the infliction of an affirmative injury". I fail to see how in terms of this definition the plaintiff has a cause of action against the 66 persons who were selected for promotion by the defendant Bank. He does not complain of any wrong

done by any of those 66 persons. He only seeks the prevention/redress of a wrong done by the defendant Bank and the Bank alone. Those 66 persons are not persons against whom the right to any relief is alleged to exist. I therefore, see no necessity to have joined them as defendants in this acection.

For the reasons aforesaid, I would dismiss this appeal with costs.

WIJEYARATNE, J. - I agree.

Appeal dismissed.