WIJESINGHE
v.
ATTORNEY-GENERAL AND OTHERS

SUPREME COURT
ISMAIL J., SHARVANANDA J., AND WANASUNDERA J.
S.C. NO. 13 OF 1979
APRIL 23 AND 24, 1979

Fundamental rights - Articles 12(1) and 12(2) and 126 of the Constitution - Removal from office - Equality - Distinction between ordinary rights and fundamental rights - Master and servant.

The petitioner complained that her services as Sub-Post mistress were terminated without any charge being brought against her and without giving her a hearing and thus the equal protection and non-discrimination guarantees of Articles 12(1) and 12(2) were infringed upon.

Held:

It is only a breach of a fundamental right and not of an ordinary right that calls for the intervention of the Supreme Court. Every wrong decision or breach of the law does not attract the constitutional remedies relating to fundamental rights.

At common law, a master is not bound to hear his servant before he dismisses him. He can act reasonably or capriciously if he so chooses, but the dismissal is valid. The servant has no remedy unless the dismissal is in breach of the contract, and then the servant's only remedy is damages for breach of contract. To succeed the petitioner has to show that the Cabinet of Ministers had in the exercise of their power of dismissal under Article 55(1) of the Constitution discriminated against her in terms of Article 12(2). The petitioner may legitimately complain of a grave miscarriage of justice but no breach of a fundamental right is involved.

Cases referred to :

(1) *Siddappa* v. *State of Mysore & another* AIR 1967 (Mysore) 67.
(2) *Budhan Chowdhary* v. *State of Bihar* AIR 1955 (SC) 191.
(3) *Snowden* v. *Hughes* (1944) 321 US 1,88 L. ed. 497
(4) *The State of Jammu & Kashmir* v. *Ghulam Rasool,* AIR 1961 (SC) 1301.
(5) *Fernando* v. *Jayaratna* (1974) 78 NLR 123
(6) *R* v. *H.K. (Infant)* (1967) 1 All ER 226, 231.

APPLICATION Under Article 126 of the Constitution

L.A.T. Williams with *Sanath Jayatilleke* for petitioner.
G.P.S. de Silva, Deputy Solicitor-General with *S. Ratnapala,* State Counsel, for the 1st and 2nd respondents.
G. Marapona, for the 3rd added respondent.

Cur. adv. vult.

April 30, 1979.

WANASUNDERA, J.

The Petitioner, who was appointed sub-postmistress of Ellagawa Sub-Post Office in April 1975, complains that her services were terminated with effect from 31st January 1979 by the Postmaster General, in consequence of a Cabinet decision following a report of a Committee called the Political Victimization Committee consisting of one person. She states that this termination was effected without any charge being brought against her and without giving her any hearing. She claims relief in terms of the equal protection and non-discrimination guarantees contained in Article 12(1) and (2) of the Constitution. Counsel for the petitioner submitted that the Government, in seeking to grant relief for alleged acts of political victimization, had in its turn subjected the petitioner herself to similar victimization. Undoubtedly there are political overtones and a political background in this case.

The respondents to this petition were only the Attorney-General and the Postmaster General. Somewhat late in the proceedings the petitioner moved to add the present holder of the post of sub-postmistress, Ellagawa, as a respondent, as she was a necessary party to the application. It was the Petitioner's case that the petitioner was moved out of the job to make way for the proposed respondent Indra Ranjini. We accordingly noticed Mrs Indra Ranjini and Mr Marapona who appeared for her consented to her addition as a party, although he complained that she has been given inadequate time to file papers or present her case.

The post of sub-postmaster, though it is a public office, has certain peculiarities about it. It is a non-pensionable post. The holder is paid a very small amount as an allowance based on a unit system, but higher amounts may be paid depending on the amount of business transacted at the Sub-Post Office. Those officers are generally permitted to engage themselves in any other work which does not interfere with their duties. The Sub-Post Office building itself must be provided by them and preferably it should be a portion of their residence. There is also residential qualification, for a person who is to function in this post should have a good knowledge of the area and of its residents. The sub-postmaster can have an assistant or must arrange for a substitute to attend to his duties when he is unable to be present. The post is terminable on one month's notice by the State while on the part of the sub-postmaster he must give at least 2 months' notice in the case of an office without telephone facilities and 6 months' where such facilities exist.

The previous sub-postmaster went out of office on 20th June, 1974. During the tenure of his office, Mrs Indra Ranjini had been

his assistant or relief officer. Though such an appointment has to be approved by the postal authorities, the person holding that job need not have the same qualification required for the post of sub-postmaster. From 20th June, 1974, Mrs Indra Ranjini had, however, acted in this post and performed all the functions pending the filling of the vacancy which was advertised. It is the interview and the events flowing from it that have a direct impact on the present application.

The Petitioner and Mrs Indra Ranjini applied for this post, presumably along with others. The respondents have submitted that the petitioner, who is a member of the Lanka Sama Samaja Party, was chosen by the Board due to pressure brought to bear on it by the Member of Parliament for the electorate, who also belonged to the same party. The respondents rely on document 2R1A, dated 6th October, 1974, written by the Member of Parliament in support of this averment.

Mr Marapona informed Court, that, since the time the contents of 2R1A came to be known, there was dissatisfaction about the proposed interview, and these fears were brought to the notice of the authorities. However, this action was of no avail, and the petitioner came to be selected and took up duties on 1st April 1975. Mrs Indra Ranjini, who belongs to the United National Party, and who claims that in ordinary circumstances her claims would not have been overlooked, had agitated her grievance with the authorities and taken it up with her own political party. The present Government, after it came to power, had, by a Cabinet decision, set up a Political Victimization Committee to go into the grievances of all persons who claimed to have suffered for their political views.

Mrs Indra Ranjini's complaint was inquired into by the Committee presided over by Mr G.P. Thambiah. He has recommended that the petitioner's appointment be cancelled and the post be given to Mrs Indra Ranjini (2R1). I am satisfied that the documents 2R3, 2R4, and the connected schedule tendered by the learned Deputy Solicitor General show that the matter had been later considered by the Cabinet, which had approved the action that was proposed. Consequent to the Cabinet decision, the State, through the Postmaster General, has availed itself of clause 11 of the contract of employment to give the petitioner one month's notice of the termination of her employment. This notice was extended twice and the petitioner vacated her post on 31st January 1979, having in effect 3 month's notice. Mrs Indra Ranjini has been given the appointment and is at present the sub-postmistress at Ellagawa.

Admittedly the power of appointment and dismissal to this class of post is vested by the Constitution in the Cabinet. The fact that it is a Cabinet decision does not make it sacrosanct. Article 55(5) specifically subjects such a decision to the over-riding power of this Court to inquire into and safeguard the fundamental rights guaranteed by the Constitution. As stated earlier, Mr Williams, counsel for the petitioner, after marshalling the facts in favour of the petitioner, with great care, submitted that the summary removal of the petitioner, without any hearing at any stage, clearly indicated unequal treatment and discrimination on political grounds.

Technically speaking, the Cabinet has only sought to rectify the alleged political victimization of Mrs Indra Ranjini, and the petitioner was ousted not directly because of her political opinions but because the Board had appointed her for ulterior reasons. The learned Deputy Solicitor General argued that there was no discrimination against her for her political opinions as such, though the evidence may indicate a preference towards Mrs Indra Ranjini.

In the view I take of this matter, I do not think it relevant to go into the numerous factual questions raised by Mr Williams, such as those relating to the qualifications and merit of the respective candidates. I have no doubt that, if some of those matters were addressed to an appropriate tribunal for relief, it would have given sympathetic consideration to them. Those matters of importance mentioned by him will find themselves answered when I have analysed the legal position in this case. One of these matters, however, pressed by counsel, merits particular mention. This was the absence of a hearing before the Tambiah Committee and that the petitioner has not been specifically told why her services were terminated and was never given an opportunity of saying something in her own defence. This is one of the unfortunate aspects of this case, and there is very little we can do in the matter if we were to hold that the action taken by the State falls within its competence and can be justified by the law, except perhaps to observe that an appeal by her to the executive for relief deserves some consideration. This Court is undoubtedly the guardian and protector of the fundamental rights secured for the people and our powers are given in very wide terms; but our authority is not absolute for these powers are subject to certain well defined principles and we have to concede that there are limits which we cannot transgress, however hard and unfortunate a case may be. We have to take cognizance of the distinction between ordinary rights and fundamental rights, and it is only a breach of a fundamental right that calls for our intervention.

Every wrong decision or breach of the law does not attract the constitutional remedies relating to fundamental rights. Where a transgression of the law takes place, due solely to some corruption, negligence or error of judgement, I do not think a person can be allowed to come under Article 126 and allege that there has been a violation of the constitutional guarantees. There may also be other instances where mistakes or wrongful acts are done in the course of proceedings for which ordinarily there are built-in safe-guards or adequate procedures for obtaining relief. In *Siddappa* v. *State of Mysore* and *another (1)* it was said -.

"Every wrong interpretation of a Rule or law does not amount to hostile discrimination, what is of the essence is hostile discrimination - an intentional unequal treatment of persons similarly placed. We are unable to agree that any and every contravention of a Rule brings the case within Art. 14 and the equality clause requires that if one person is wrongly selected, every one else similarly situated is also entitled to be selected. This contention is wholly untenable. In cases of this nature, there is no hostile discrimination; to take an erroneous view of the law does not amount to a hostile discrimination, against anyone. In such a case there is no question of a contravention of Article 14."

Again in *Budhan Chowdhary* v. *State of Bihar* (2) Das, C.J., referring to American decisions said -

"It is suggested that discrimination may be brought about either by the Legislature or the Executive or even the Judiciary and the inhibition of Article 14 extends to all actions of the State denying equal protection of the laws whether it be the action of any one of the three limbs of the State. It has, however, to be remembered that, in the language of Frankfurter J., in *Snowden* v. *Hughes* (3) 'the Constitution does not assure uniformity of decisions or immunity from merely erroneous action, whether by the Courts or the executive agencies of a State." The judicial decision must of necessity depend on the facts and circumstances of each particular case and what may superficially appear to be an unequal application of the law may not necessarily amount to a denial of equal protection of law unless there is shown to be present in it an element of intentional and purposeful discrimination. (see *per* Stone, C.J. in *Snowden* v. *Hughes,* (supra)). It may be mentioned at once that in the present case there is no suggestion whatever that there has been at any stage any intentional or purposeful discrimination as against the appellants by the Sub-Divisional Magistrate or the District Magistrate or the Section 30 Magistrate who actually tried the accused."

I think, the principles enunciated above can find application when we consider the action of the Cabinet in this case. The Cabinet, which is presided over by the President can be regarded as the organ charged with the direction and control of the Government. Its powers would include the right to look into any problem and take any necessary remedial measures. The Cabinet was, therefore, entitled to inquire into cases of political victimization. The learned Deputy Solicitor General submitted that the Cabinet can choose the manner in which it will keep itself informed of any matter in the country. The Political Victimization Committee was one such arrangement and dealt with one such matter.

As far as I can see, the Cabinet, after ascertaining certain matters, has taken advantage of clause 11 of the contract between the petitioner and the Government and acted on its right to terminate her contract of service after due notice. This action is not illegal, unless the petitioner can prove that it is in some way tainted.

It is conceded that if the Political Victimization Committee had given the petitioner a proper hearing, the Cabinet action would have been in order. The real question before us then is whether the Cabinet decision itself can be declared bad, because a matter relating to that decision and connected to it is found to have been improperly done. The decision of the Cabinet involves reference to the recommendations of the Political Victimization Committee. This is consistent with those recommendations being either a condition precedent for Cabinet action or the Cabinet, merely having regard to the recommendations in the course of the exercise of its powers. Considering the extent and the width of the powers of the Cabinet, no limitation however on its powers can be lightly assumed.

We also see the circumstances under which the Cabinet came to make this decision from documents 2R3, 2R4, and the schedule. The entire proceedings of the committee were not placed before the Cabinet, but only its recommendations. The proposal for executive action following on the recommendations of the Committee was one of the items on the Agenda at the Cabinet Meeting. The Cabinet cannot be expected, in the course of its multifarious duties, to give its mind to intricate and technical questions of law in the same manner as a Court of law. The termination of the petitioner's services under clause 11 of the contract was a course of action available to the Cabinet and it was *prima facie* lawful. This need not have necessarily involved the

question as to whether the petitioner had or had not been given a hearing before the Political Victimization Committee, which had only an indirect connection with the actual issue before the Cabinet.

Supposing there was such a duty on the Cabinet that it ought to have considered every intricate legal issue, even indirectly connected with a matter under discussion, with the same meticulous care and knowledge as a Court of law would not such an omission still constitute just a mere error on the part of the Cabinet? As far as the cabinet decision was concerned, the proceeding of the Committee of Inquiry was collateral to it. The failure to give a hearing was an incident in those proceedings. The Cabinet was merely having recourse to those proceedings when coming to its conclusion. I do not think, its duty went to the extent of scrutinising those proceedings as would be done by a Court in writ proceedings. Certainly, the action of the Cabinet in acting with reference to that finding does not savor of *mala fides,* nor can we say that the Cabinet decision is null and void. The mistake of the Committee, however serious, cannot, in my view, have the effect of undermining the Cabinet decision which, by virtue of the constitutional provisions, is entitled to an independent existence. Further, a mere lapse on the part of the Cabinet cannot be given positive content and converted into an act of deliberate or hostile discrimination.

In this connection the case of *The State of Jammu & Kashmir* v. *Chulam Rasool,* (4) cited by the learned Deputy Solicitor-General seems to have direct bearing. The facts of this case show a close similarity with the case before us. The respondent in that case, who was a Civil Engineer, was employed in a responsible post in a large Hydro-Electric Scheme under the State Government. The Government became dissatisfied with the way the work was proceeding and appointed a Commission of Inquiry to inquire into certain allegations concerning the delay of the work. Pending the investigations, various officers including the respondent were placed under suspension. After the Commission of Inquiry submitted its report, and on the basis of that report, stronger action was taken against the respondent and he was brought down in rank. He sought relief from the Court alleging, as in the case before us, that he was neither served any charges nor given a hearing by the Commission, and alleged that the action against him violated the constitutional guarantee of equal protection. In dismissing his petition the Court said -

"The only fundamental right, however on the violation of which learned counsel for the respondent could rely in support of the order of the High Court was that conferred by Art. 14, namely, the right to the equal protection of the laws. He said that the respondent was entitled to have the procedure prescribed by the Kashmir Civil Service Rules followed before the order demoting him could be made and as that procedure was not followed, his client had been denied the equal protection of the laws. It seems to us that even if the Rules are a law and the respondent has not been given the benefit of them, all that can be said to have happened is that the appellant has acted in breach of the law. But that does not amount to a violation of the right to the equal protection of the laws. Otherwise every breach of law by a Government would amount to a denial of the equal protection of the laws. We are not aware of any authority in support of that proposition and none has been cited to us. Nor are we able to find any support for it in principle. It is not the respondent's case that other servants of the appellant had been given the benefit of those Rules and such benefit has been designedly denied only to him. It seems to us that the appeal must be allowed on the simple ground that the Respondent's petition does not show a violation of any fundamental right."

The Government has formed the view that there had been widespread political victimization during the regime of the last government and it has, as it lawfully may, taken action to give relief to these victims. This action, consequent on a promise given before the elections, was public and general in nature and designed to remedy a particular evil. Clearly this action can be considered to be *bone fide* as far as the intentions of the Government go. It may be mentioned that even counsel got involved in a confusion that, because the Government action related to political victimization, such action itself constituted an act of victimization. This is a *non sequitur*. On the material before me, I am unable to say that the government action would be described as an instance of purposeful or hostile discrimination.

In this state of affairs, I can find no way of giving relief to the petitioner. If some right of hers has been violated, the remedy lies elsewhere. No order of costs, however, will be made against her.

ISMAIL, J.

I have had the advantage of having read Justice Wanasundera's order in this matter and I am fully in agreement with him with regard to the conclusions and the ultimate order of the dismissal of

the application. However I wish to add my own views on some of the documents that have been produced in this case.

2R1 is a certified copy of the proceedings and findings of the Political Victimization Committee (Public Service). This contains the proceedings that have transpired before one Mr G.P. Thambiah and the ultimate conclusion reached by him. Those proceedings indicate that Mrs A.K. Indra Ranjini and one Mr Wijetunga who is apparently, a Superintendent of Post Offices have given evidence before him.

Indra Ranjini has indicated that she was appointed to act as sub-postmistress of Ellagawa from 20.06.74 and her services were terminated on 31.03.1975. She has testified to the fact that she was the best qualified for that job and that the then Member of Parliament in that area Mr Vasudeva Nanayakkara has stated that the appointment would be given to a Lanka Sama Samaja Party person. She and her people belong to the United National Party. Mr Wijetunga had stated that the Board selected Nimala Wijesinghe and that the Member of Parliament had intervened. At the bottom of the page there is a comparison of the educational qualifications of Ranjini and of Nimala Wijesinghe. It is patently clear that as between the two of them Ranjini has had better educational qualifications and in addition had acted in that post for nine months. It is also in evidence that she had been relief sub-postmistress for a further length of time prior to her being appointed to act.

It is to be noted that 2R1 are proceedings held as a result of an allegation of political victimization made by Indra Ranjini and is not an inquiry held with regard to the appointment of Nimala Wijesinghe. Therefore what would have been relevant before Mr Thambiah at the inquiry would necessarily have been facts and circumstances which would have been placed before Mr Thambiah to indicate that Ranjini had not been given appointment as permanent sub-postmistress because of political victimization. Therefore, Nimala Wijesinghe would have had no status to appear to lead evidence before Mr Thambiah. It appears to me as I stated earlier that this is not an inquiry concerning the appointment of Nimala Wijesinghe but only an inquiry as to why Ranjini had not been appointed to this post though her educational qualifications were patently superior to that of Nimala Wijesinghe and in addition she had experience in this post both as relief sub-postmistress and also as an acting sub-postmistress.

No doubt the finding by Mr G.P. Thambiah is very bald. After comparing the educational qualifications he had made an abrupt order.

"Cancel appointment and give it to Ranjini." It is in consequence of this order that certain steps have been taken which had ultimately led to the cancellation of the appointment of the present petitioner and the reinstatement in the job of Ranjini.

In 2RI there is a reference to the document P1, a letter from the then Member of Parliament. Incidently 2RIA is a letter from the then Member of Parliament for that area addressed to one Nalini Kusuma Pattiaratchchi. The Member of Parliament had in that letter referred to "Comrade Nalini Kusuma Pattiaratchchi" without the designation whether this person was a 'Miss' or 'Mrs'. The letter is addressed as "Dear Comrade". In the course of the letter the Member of Parliament has stated:

> "I am extremely sorry that I am not in a position to give you a chance and I was aware of the difficulties in selecting a person from several of our own people and the pain of mind that would cause to the unselected."

Viewed in the context of the allegation made by Indra Ranjini that the Member of Parliament had stated that the appointment would be given to the Lanka Sama Samaja Party person, the tone of this letter 2RI appears to indicate that the member concerned had really recommended the appointment of Nimala Wijesinghe purely on the basis of party affiliations. In the letter 2RIA the Member of Parliament had stated:

> "Having considered various views and requests I decided to recommend comrade Nimala Wijesinghe for the said post."

The description "Comrade Nimala Wijesinghe" clearly and unmistakably savours of certain political affiliations. Therefore on a reading of this document 2RIA the allegation of political interference in the appointment to this post by the Member of Parliament in question is substantiated. Mr. Wijetunga himself had testified to the fact that when the board selected Wijesinghe to that post the Member of Parliament had intervened. When the papers ultimately went before the Cabinet, the Cabinet had decided to cancel the appointment of petitioner and appoint Ranjini to the post. There had been satisfactory indications that she had been politically victimized in not being given the post when she was the most qualified and certainly in any event more qualified than the

present petitioner. The recommendations of Mr G.P. Thambiah had been given without adducing reasons; as such the proceedings that transpired befpre Mr G.P. Thambiah indicated in 2RI must have been before the Cabinet of Ministers and they were entitled to draw their own conclusions independently of the Commissioner's recommendations.

Article 158 of the Constitution states thus:

"Where any person is empowered under the provisions of the Constitution to delegate any power, duty or function to any other person such person delegating such power, duty or function may, notwithstanding such delegation, exercise perform or discharge such power, duty or function and may at any time revoke such delegation.

In this Article "person" includes any body of persons or any authority."

The next document which attracts my attention is the document 2R3. In this what is categorised in paragraph 1(i) to (vi) is only a classification with regard to action that has to be taken in terms of the interim report on the recommendations of the Political Victimization Committee in respect of employees in the Post and Telecommunications Department. Really the action indicated therein was to be taken in respect of only these classes of persons who fall within (i), (iv). This is not exhaustive of all types of employees who would be affected by this report.

Towards the bottom of paragraph 3 in 3R3 it is stated:

> "In addition to this, it is also necessary to have the approval to implement the other recommendations of the Committee which do not involve monetary provision, and particulars of which are given in the annexures."

This part of the report indicates that there had been other recommendations of this Committee apart from what are tabled in paragraphs (1) and (2) of 2R3. Therefore this submission by Counsel for petitioner that since the case of the petitioner does not come within paragraphs (1) and (2) of 2R3, the Cabinet decision regarding the dismissal of the petitioner is null and void, appears to be without any substance. The passage from paragraph 3 which I reproduced clearly indicates that paragraphs 1 and 2 are not exhaustive of the classes of persons in respect of whom the Political Victimization Committee had reported on.

I am of the view, agreeing with Wanasundera, J. that the application of the petitioner in this case is not one that comes within the ambit of Article 126 and therefore must be dismissed. Considering the facts and circumstances of this case I would order no costs.

SHARVANANDA, J.

On the retirement of the Sub-Postmaster of the Sub-Post Office of Ellagawa, the said post was advertised. The advertisement stated that "the post is non-pensionable, a gratuity is payable on retirement on completion of sixty years of age." The petitioner was one among several persons who had applied for the said post. It is common ground that the petitioner satisfied the eligibility requirements for that post. The petitioner was interviewed along with other applicants on 12.12.74 and was, by letter dated 16.12.74, informed that she was selected for appointment to the said post. The said appointment was subject to the terms and conditions, *inter alia,* set out in the document P4 styled "Conditions of Service of Sub-Postmasters, Grades A and B, in the Ceylon Posts and Telecommunications Department." This document contains the rules and regulations subject to which the administration of the Posts and Telecommunications Department is conducted by the Postmaster General. P4 states, *inter alia,* that the post of Sub-Postmaster is a non-pensionable appointment and subject to termination on a month's notice. The petitioner was, in accordance with the letter dated 18/24 March '75, appointed to the said post and placed in control of the Sub-Post Office at Ellagawa as its Sub-Postmistress on 01.04.75. Accordingly, the petitioner assumed duties as the Sub-Postmistress of Ellagawa and continued to function in the said office till the termination complained of on 31.1.79.

Indra Ranjini, the 3rd added respondent was also an applicant for the post of Sub-Postmistress of the Sub-Post Office at Ellagawa.

After the present Government assumed office, in August '77 the Government appointed a Committee for the purpose of investigating instances of political victimization during the period of the previous Government. Indra Ranjini, along with the other Youth Leaguers of the United National Party, made representations to the aforesaid Committee alleging that the petitioner had obtained the aforesaid appointment of Sub-Postmistress by reason of the fact that she and her family were members of the Lanka Sama Samaja Party and that the M.P. of the area had intervened to support the claim of the petitioner for such appointment. The said Committee was a one-man Committee consisting of G.P.

Thambiah, retired Permanent Secretary. On the *ex-parte* evidence of the said Indra Ranjini, the Commission made the following recommendation: "Cancel appointment and give it to Ranjini." It is common ground that the petitioner, against whom the complaint of political preferment was made, was not at any stage noticed at all by the Victimization Committee and was not called upon to controvert the charge of bringing to bear political influence in the matter of her appointment nor explain or exonerate herself. The petitioner further alleges in the petition that had she been given an opportunity, she would have demonstrated that Indra Ranjini did not have the necessary qualifications and therefore could not have been considered for appointment. In the proceedings before Mr Thambiah, Indra Ranjini stated that she was not appointed, though she was the best qualified and had been acting as Sub-Postmistress, Ellagawa, for nine months and that she had got through the G.C.E. (O/Level) with six subjects, scoring three credits, and also got through the Advanced Level with three subjects. The said Ranjini further stated that she and her people were members of the United National Party. One Wijetunge, Superintendent of the Post Office, also gave evidence and stated that the interview Board had selected the petitioner and that the M.P. had intervened. The letter 2R1 was also marked to show that the M.P. concerned, Mr Vasudeva Nanayakkara, had "recommended the petitioner for the post."

The Postmaster General, who is the 2nd respondent to the application, has stated in his affidavit that, pursuant to the decision of the Cabinet of Ministers granting approval to implement the recommendations of the Political Victimization Committee, the petitioner was removed from office and Indra Ranjini was appointed in her place.

The petitioner has moved this Court under Article 126 of the Constitution, stating (a) that she had been denied the right of equality under the law and to equal protection of the law, (b) that she had been discriminated against on the ground of political opinion, and (c) that Indra Ranjini (the party noticed) has been favoured because of political opinion. the petitioner states that her fundamental right of equality of treatment enshrined in Article 12 of the Constitution had been infringed by Executive or Administrative action and that she had been unjustly removed from office. She prays that she be restored to the office of Sub-Postmistress of the Sub-Post Office at Ellagawa.

According to the Postmaster General, who is the 2nd respondent to the application, "the Cabinet of Ministers decided to terminate the services of the petitioner as the Cabinet of Ministers had decided to appoint the said Indra Ranjini "who was qualified for appointment and had previously acted in the post but was deprived of the appointment in April '75." The position taken up by the Postmaster General is that, acting on the recommendations of G.P. Thambiah (the Victimization Committee), the Cabinet of Ministers decided to terminate the services of the petitioner and to appoint Indra Ranjini in her place.

I have examined the proceedings conducted by the Victimization Committee and I regret to state that the proceedings 2RI are far from satisfactory. The entire proceeding is vitiated by the fact that the petitioner, who was the person most concerned, was not even noticed, and recommendations prejudicial to the petitioner have been made behind her back. "Reason and justice require that the person concerned against whom the Commissioner may feel inclined to make an adverse report should be heard before a finding is reached against him" (*Fernando* v. *Jayaratna* (5)). A duty was cast on the Commissioner to act fairly by observing the principles of natural justice. It was stated by Lord Parker C.J., "Good administration and an honest or *bona fide* decision must, as it seems to me, require not merely impartiality but of acting fairly". *(R.* v. *H.K. (Infant,* (6)). In this case, the Commissioner should have acted fairly and given the petitioner against whom he was going to make a report a fair opportunity of correcting or contradicting what was said against her. His function was to find the facts. It is inconceivable how a fact-finding Commission could have satisfactorily discharged its duty without hearing the party against whom allegations were made. Neither the appointing authority nor the person appointed was heard on the allegation questioning the appointment, and yet, on the *ex-parte* evidence of Indra Ranjini, which consisted largely of hearsay evidence, the Commissioner has chosen to condemn the appointing authority and the petitioner who was appointed and the Commissioner has substituted his own opinion for the opinion of the appointing authority. The fact that the M.P. had recommended the petitioner cannot be construed to mean that he had brought to bear undue influence in the matter of the petitioner's appointment. Further, the circumstance that Indra Ranjini had acted in the post for sometime, because of her connection with the last holder of the post does not give her a *pre-emptive* right. The fact that Ranjini had passed the Advance Level Examination while the petitioner has passed only the G.C.E. (O.L.) is in favour of Ranjini. But according to the advertisement P1, the educational qualification required was a pass in the G.C.E. (O.L.)

only. Anyway, the Commissioner Thambiah, in his order did not even reach the finding that there was any political victimization and hence has no authority or jurisdiction to recommend that the petitioner should be removed.

But whatever it be, since the Commissioner had failed to observe the principles of natural justice in arriving at his conclusion that the petitioner should be removed from service, the proceedings and recommendations of the Commissioner are a nullity; and the fact the Cabinet of Ministers granted approval to the Postmaster General to implement the recommendations of the said Political Victimization Committee gives no sanction or validity to same. Such a recommendation can never form the basis for termination of services on good ground. Since the Cabinet decision to discontinue the petitioner is grounded on such a recommendation, the termination of the petitioner's services is not based on any good ground and can only be justified, if at all, on the fact that the petitioner had been given one month's notice of termination of services in terms of the conditions of service of Sub-Postmasters (P4).

It is to be noted, however, that the Postmaster.General has not chosen to justify the termination of the petitioner's services, on this ground, namely, that her services have in law been terminated with one month's notice. This provision regarding one month's notice of termination of services contained in the conditions of service of Sub-Postmasters, Grades A and B, in the Ceylon Post and Telecommunications Department, has, in my view, ceased to be operative after the coming into operation of the Constitution of the Democratic Socialist Republic of Sri Lanka on the 7th of September '78 as, in terms of Article 55, "subject to the provisions of the Constitution, the appointment,transfer, dismissal and disciplinary control of Public Officers is hereby vested in the Cabinet of Ministers and all Public Officers shall hold office at pleasure." The one month's notice stipulated in P4 cannot therefore survive the aforesaid provision of the Constitution. The Cabinet of Ministers or its delegate only could have lawfully dismissed the petitioner or terminated her services.

At common law, a master is not bound to hear his servant before he dismisses him. He can act unreasonably or capriciously if he so chooses, but the dismissal is valid. The servant has no remedy unless the dismissal is in breach of the contract, and then the servant's only remedy is damages for breach of contract. Ordinarily, a tenure at pleasure implies the right of the employer to dismiss the servant at any time without assigning any reason. For

the petitioner to succeed in the application, the petitioner has to show that the Cabinet of Ministers had in the exercise of their power under Article 55(1) of the Constitution, discriminated against her in terms of Art. 12(2) and had thereby infringed on her right of equal treatment, warranted to her by Article 12 of the Constitution. The petitioner may legitimately complain of a grave miscarriage of justice. But that is not enough to establish that the procedure adopted by the Executive in discontinuing her has impinged on the fundamental rights secured to her by the constitution. The Deputy Solicitor-General submitted, as a matter of law that in terms of Article 55(1), the petitioner held office at pleasure and that the Cabinet, in the exercise of its powers under that Article, had validly terminated her services and that this Court cannot probe into the motivations of the Cabinet, unless some infringement of the petitioner's fundamental right is involved. He relevantly referred us to the unanimous decision of the Constitutional Bench of the Supreme Court of India in *State of Jammu and Kashmir* v. *Ghulam Rasool* (4) which held that even though the State had failed to follow the procedure prescribed by the Kashmir Civil Service Rules before the order demoting the employee was made, all that the State had done was to have, if the Rules had the status of law, acted in breach of the law, but that did not amount to a denial of the equal protection of the law. The Court further observed that "it is not the respondent's (employee) case that other servants of the appellant (the State) had been given the benefit of those Rules and such benefits had been designedly denied only to him." This decision represents the correct legal position. That case cannot be distinguished. And I will respectfully apply that decision to the facts of the present case. Mere violation of a law, by the Executive does not amount to violation of equal protection. I hold that though the petitioner has suffered a miscarriage of justice, yet this Court is helpless in affording any relief. The jurisdiction of this Court under Article 126 of the Constitution is limited to hearing and determining only questions relating to the infringement of a fundamental right. Her grievance cannot be said to be the consequence of the infringement of the fundamental right of equal protection of the laws or of discrimination against her by the Cabinet of Ministers on any of the grounds set out in Article 12(2). Counsel for the petitioner submitted that if the petitioner cannot bring her case under Article 126(1), she is denied all other remedy by Article 55(5) and commented cynically that the concept of fundamental rights incorporated in the Constitution can have no meaning to her if she can be dismissed from Public Service without being heard and she can have no remedy against such action of the Executive. But sympathy cannot found jurisdiction when the law has failed to do so.

In the circumstances, it is with regret that I have to dismiss the petitioner's application. The respondents, however, will not be entitled to any costs.

Application dismissed.