

NANDISENA DE ZOYSA
v
THE UNIVERSITY GRANTS COMMISSION AND OTHERS

COURT OF APPEAL.
SRIPAVAN, J.
CA 299/2000.
MARCH 12 AND 30, 2004 AND
JULY 14, 28, 2004.

Legal duty – Recommendation of Political Victimization Committee – Is there a legal duty to implement the recommendation? – Moral obligation – Does writ lie to compel performance?

The petitioner who was re-employed as a Senior Assistant Bursar was sent to Samanthurai; without reporting, he requested a transfer closer to Colombo; which was refused by the Secretary of the UGC (1st respondent). Thereafter the petitioner appealed to the Political Victimization Committee (PVC) and indicated to the 1st respondent (U.G.C.) that he could assume duties after a decision was taken by the PVC. The PVC recommended that the petitioner be re-instated in service. However, the petitioner was not allowed by the 1st respondent to report for duty pursuant to the recommendation of the PVC which was approved by the Cabinet.

The petitioner sought a *writ of mandamus*.

Held:

Per Sripavan, J.

"The 1st and 2nd respondents have a moral obligation to implement the recommendation of the PVC in so far as it related to the petitioner."

- (1) However *mandamus* can be issued only to compel the authority to perform its statutory duties and does not lie to compel performance of a moral obligation.
- (2) *Mandamus* lies to secure the performance of a public duty, in the performance of which an applicant has sufficient legal interest.

APPLICATION for a writ of *mandamus*.

Cases referred to:

- (1) *Mendis v Seema Sahitha Panadura Janatha Santhaka Pravahana Sevaya and Others* – 1995 2 Sri L. R. 284 at 294.
- (2) *Weligama Multipurpose Co-operative Societies Ltd v Chandradasa Daluwatte* – 1984 1 Sri L.R. 195.
- (3) *Sannasgala v University of Kelaniya and Members of the University Senate* – 1991 1 Sri. L.R. 201

Chamantha Weerakoon with *Madu Kurera* for petitioner.

A. Gnanathanan, Deputy Solicitor General for respondents.

Cur. adv. vult.

August 27, 2004.

SRIPAVAN, J.

The petitioner was appointed to the post of Senior Assistant Bursar by the first respondent with effect from 11th February, 1982 and was attached to the second respondent University. The Vice Chancellor of the second respondent University interdicted the petitioner with effect from 15th July 1985 in view of certain irregularities pointed out by the Auditor-General. A disciplinary inquiry was held into the charges levelled against the petitioner and at the conclusion of the said inquiry, the Vice Chancellor of the second respondent University on 4th April 1989 informed that it has been decided by the first respondent to dismiss the petitioner with effect from 15th July, 1985 in accordance with the findings reached. On an appeal made by the petitioner to the University Services Appeal Board against the dismissal, the said Board affirmed the order of dismissal by letter dated 7th May, 1992.

The petitioner thereafter on 6th May, 1992 submitted a petition to the Speaker of Parliament which was referred to the Committee on Public Petitions. At the inquiry held before the Committee, on the recommendation of the Council of the second respondent, the first respondent decided to re-employ the petitioner as a Senior Assistant Bursar of the affiliated University College at Sammanthurai. Accordingly, the petitioner was informed by letter dated 10th February, 1994 marked P5 to assume duties at the affiliated University College, Sammanthurai without any back wages. 20

The petitioner however without reporting to the affiliated University College at Sammanthurai by letters dated 23rd February, 1994 and 24th February, 1994 marked P6 and P7 respectively addressed to the Secretary of the first respondent Commission requested a transfer closer to Colombo due to security reasons together with back wages during the period the petitioner was out of employment. The Secretary of the first respondent University by letter dated 28th March, 1994 marked P8 made it clear that it would not be possible to accommodate the petitioner in an institution closer to Colombo as there were vacancies only in Sammanthurai and in the affiliated University College at Trincomalee. The said letter also indicated that the first respondent Commission would consider appointing the petitioner to the affiliated University College at Trincomalee if he was willing to assume duties. The petitioner was also informed that with regard to his back wages, the first and the second respondents agreed at the inquiry before the Committee on Public Petitions that the petitioner's reinstatement in service would be subject to a condition that the period during which the petitioner was out of employment be considered as no pay. 30 40

Since the petitioner did not report for work for more than a year, the Secretary of the first respondent Commission by letter dated 27th April 1995 marked P9 informed the petitioner to intimate the Commission by return of post as to whether the petitioner was prepared to report for duty at the affiliated University College, Sammanthurai. The petitioner's reply to the Commission was to submit his appeal dated 23rd February 1994 marked P6 to the new Chairman and members of the first respondent Commission for reconsideration of his appeal and to grant relief. 50

The first respondent again by letter dated 9th November 1995 marked P11 requested the petitioner to assume duties as a Senior Assistant Bursar at the Wickremarachchi Ayurveda Institute, Yakkala which was affiliated to the University of Kelaniya upon a decision taken by the government. The petitioner by his letter dated 26th November 1995 marked P12 informed the Secretary of the first respondent Commission that he has reported his grievances to the Political Victimization Committee (hereinafter referred to as PVC) and would assume duties after a decision was taken by the PVC. 60

Thereafter, the first respondent by letter dated 25th November 1997 marked P13 informed the petitioner that the recommendation of the PVC relating to the petitioner had been forwarded to the Vice Chancellor of the University for implementation. The counsel for the petitioner strongly contended that the respondents are under a legal duty to implement the recommendation of the PVC relating to the petitioner.

The Chairman of the first respondent Commission in paragraph 15 of his affidavit dated 2nd April, 2001 stated that the Secretary, Education Service Committee of the Public Service Commission by letter dated 10th October 1997 marked 1R5 informed the first respondent Commission that the Cabinet of Ministers had approved the recommendation of the PVC and that the petitioner be reinstated in service with effect from 1st January, 1995. The Chairman of the 1st respondent in paragraph 16 of his affidavit further stated that he decided to inform the Secretary, Education Service Committee that the petitioner failed to assume duties even though he was re-instated pursuant to a recommendation made by the Public Petitions Committee. 70 80

It was the contention of the learned counsel for the petitioner that the first respondent has failed to give its mind to the recommendation of the P.V.C. after the first respondent forwarded the letter dated 27th November 1997 marked P13. Having accepted the petitioner's letter dated 26th November 1995 marked P12 without any protest, the first respondent Commission should have considered the recommendation of the PVC. I agree with the

learned counsel for the petitioner that the offers made to Sammanthurai, Trincomalee and Yakkala were all made prior to the recommendation of the PVC and respondents could not rely on such offers now. No evidence has been placed by the respondents to prove that the petitioner was asked to report for duty pursuant to the recommendation of the PVC which was approved by the Cabinet of Ministers on 18th December, 1996 as alleged. Thus, I am of the view that the first and the second respondents have a moral obligation to implement the recommendation of the PVC in so far as it relates to the petitioner and I hope they would do so without any further delay. 90

This court in *Mendis v Seema Sahitha Panadura Janatha Santhaka Pravahana Sevaya and others*⁽¹⁾ observed that a writ of *mandamus* lies only to compel the discharge of a statutory duty by a public authority. In *Weligama Multipurpose Co-operative Societies Ltd. v Chandradasa Daluwatte*⁽²⁾ the Supreme Court held that "*Mandamus lies to secure the performance of a public duty in the performances of which an applicant has sufficient legal interest*". Similarly in *Sannasgala v University of Kelaniya and Members of the University Senate*⁽³⁾ the Supreme Court observed "*that the petitioner has failed to establish that the respondents are subject to any public or any statutory duty which entitled the petitioner to the writ of mandamus he seeks to obtain.*" Thus, *mandamus* can be issued to compel an authority to perform its statutory duties and does not lie to compel performance of a moral obligation. There is no express law whereby the respondents can be compelled to accept the recommendation of the PVC. It is a discretion that is vested with the first and the second respondents. The petitioner has no such absolute right as he claimed to the exclusion of any discretion exercisable by the respondents in this regard. 100 110

The petitioner having failed to satisfy that he has a legal right for the performance of a statutory duty by the respondents against whom this writ is sought, this court cannot issue *mandamus* against the respondents to implement the recommendation of the PVC in so far as it relates to the petitioner. 120

Accordingly the petitioner's application is dismissed, however in all the circumstances without costs.

Application dismissed.