

TUAN ISHAN RABAN AND OTHERS
v
**MEMBERS OF THE POLICE COMMISSION AND
PRADEEP PRIYADARSHANA**
v
MEMBERS OF THE POLICE COMMISSION AND OTHERS

SUPREME COURT.
DR. SHIRANI BANDARANAYAKE, J.
FERNANDO, J. AND
MARSOOF, J.
S.C. (F.R.) APPLICATION 599/2003 AND
S.C. (F.R.) APPLICATION 650/2003
5TH JULY, 2006

Fundamental Rights – Right to equality – Articles 14(1) and 12(1) of the Constitution. Police Ordinance – Section 26(B), Section 26(H) – Thirteenth Amendment.

The petitioners in these two applications joined the Sri Lanka Police Force as Reserve Sub-Inspectors of Police. In their petitions they state that they were assigned to carry out the same duties that were performed by the Sub-Inspectors of the Regular Police Force. In their petitions they further state that they had received identical salaries and emoluments that were given to the Sub-Inspectors of the Regular Police Force and were subjected to same disciplinary procedures and Code of Conduct in the manner applicable to the Sub-Inspectors of the regular Force. It is the position of the petitioners that there is hardly any difference between the Sub-Inspectors of the Reserve Force and the Regular Force in the Police. In these circumstances petitioners in both petitions state that it is unequal, unfair and arbitrary for them to be treated differently from the Sub-Inspectors of the regular Police Force. Accordingly, they alleged that it is unequal, unfair and arbitrary for them to be treated differently from the Sub-Inspectors of the Regular Force in terms of the Circular marked P1 by which they have to serve six years in the Regular Force prior to promotion and in the circumstances violated their fundamental rights guaranteed under and in terms of Article 12, 12(1) and 14(1) of the Constitution.

Held:

- (1) Equality as postulated in Article 12(1) of the Constitution means the right of a person to be treated alike among his equals and such rights to be administered equally. Accordingly, Article 12(1) of the Constitution ensures the protection from arbitrary and discriminatory actions by the executive and/or the administration;

per Shirani Bandaranayake, J.

"However such guaranty does not forbid reasonable classification, which is founded on intelligible differentia. The concept of equality only forbids actions which are unreasonable, arbitrary and capricious and not the classification that is reasonable."

- (2) The officers of the Regular Force and the Reserve Force of the Police belong to two different categories and therefore the Clause 2.1.III in the Circular 'P1' cannot be regarded as unequal, unfair, arbitrary or violative of the petitioners fundamental rights guaranteed in terms of Article 12(1) of the Constitution.

APPLICATION for infringement of fundamental rights.

Cases referred to:

- (1) *Ram Krishna Dalmia v Justice Tendolkar* (A.I.R. 1958 S.C. 538).
(2) *The State of Jammu and Kashmir v Triloki Nath Rhosa and others* (A.I.R. 1974 S.C. 1)

Romesh de Silva, P.C. with *Sugath Caldera* for petitioners.

Rajiv Goonatillake, State Counsel for respondents.

Cur.adv.vult.

July 07, 2006

DR. SHIRANI BANDARANAYAKE, J.

The petitioners in these two applications (S.C. Application Nos. 599/2003 and 650/2003), joined the Reserve Cadre of the Sri Lanka Police Force and had functioned as Sub-Inspectors of Police for varying periods. According to the petitioners, an undated Circular was issued on 21.10.2003, signed by the 9th respondent in S.C. (Application) No. 599/2003, which stated in Clause 2.1.III, that Sub-Inspectors of Police/Women Sub-Inspectors of Police, who had been serving in the post of Sub-

Inspector of Police for six years after confirmation would be eligible to apply for the post of Inspector of Police (P1).

The petitioners stated that although they had entered the Sri Lanka Police Force as Reserve Sub-Inspectors of Police, they were assigned to handle identical duties that were carried out by the Sub-Inspectors of the Regular Police Force. Moreover, the petitioners had received the identical salaries and emoluments that were given to the Sub-Inspectors of the Regular Police Force and were subjected to the same orders, code of conduct, disciplinary procedures as were applicable to the Sub-Inspectors of the Regular Force. Accordingly, the petitioners claimed that they are in fact identical and equal to the Sub-Inspectors of the Sri Lanka Regular Force. In the circumstances, the petitioners alleged that it is unequal, unfair and arbitrary for them to be treated differently from the Sub-Inspectors of the Regular Force and that the aforementioned Clause 2.1.III of the undated Circular (P1) by which they have to serve six years in the Regular Force prior to promotion is also unequal, unfair, arbitrary and violative of their fundamental rights guaranteed in terms of Articles 12, 12(1) and 14(1)(g) of the Constitution.

This Court granted leave to proceed for the alleged infringement of Article 12(1) of the Constitution.

Learned President's Counsel for the petitioners submitted that for the purpose of promotion, experience is needed and the rationale behind the need for having such experience is to see whether the relevant Officer is qualified to serve in the next rank. Learned President's Counsel contended that at the point of entry the qualifications for enlistment as Sub-Inspectors of the Sri Lanka Reserve Force, was similar to the enlistment of Sub-Inspectors in the Regular Force and considering the nature of the functions of the Regular Force and Reserve Force being identical, the years of service of the petitioners spent in the Reserve Force should be taken into account when considering the promotions to the rank of Inspector.

Admittedly, the petitioners do not have six (6) years of service as Sub-Inspectors in the Regular Force and therefore

they are precluded from applying for the said promotion. The contention of the petitioners therefore is that, the service of the petitioners as Sub-Inspectors in the Reserve Force should be considered along with their service as Sub-Inspectors in the Regular Force, so that they would have the necessary six years as Sub-Inspectors, to apply for the promotion in question.

Learned State Counsel for the respondents contended that the petitioners, being officers of the Reserve cadre cannot be equalled with the Officers of the Regular Service for several reasons and therefore the petitioners' applications in S.C. (FR) No. 599/ 2003 and S.C. (FR) No. 650/2003 cannot be allowed.

The question that arises for consideration therefore is whether the Regular Force and the Reserve Force of the Sri Lanka Police could be equalled on the basis of duties and functions of the respective Officers or whether they should be recognised as unequals, who belong to two separate categories.

Admittedly the petitioners in both these applications at the point of entry, joined the Reserve Force of the Sri Lanka Police. The Police Ordinance refers to a General Police Force as well as a Police Reserve for the purpose of assisting the Police Force in the exercise of its powers and the performance of its duties.

Learned State Counsel for the respondents strenuously contended that the Regular Officers and Reserve Officers of the Sri Lanka Police belonged to two different classes of Officers, who were classified as such for objective reasons, which included the following:

1. the Reserve Force and the Regular Force are categorized separately under the Police Ordinance;
2. different requirements are applicable for recruitment and for promotions in the Regular Force and Reserve Force; and
3. different terms of employment are applicable in the Regular and the Reserve Force.

In order to consider the submissions of the learned State Counsel for the respondents, let me now turn to examine the aforementioned reasons, separately.

1. The Reserve Force and the Regular Force are categorized separately under the Police Ordinance

The Police Ordinance (hereinafter referred to as the Ordinance) clearly refers to the establishment of a General Police Force as well as a reserve Police Force. Whilst section 3 of the Ordinance refers to a General Police Force for the purpose of effectual protection of persons and property, section 24 deals with the Reserve Police Force to assist the Police Force in the exercise of its powers and the performance of its duties. Thus the Reserve Police Force was established for the purpose of assisting the regular Force in the performance of their duties and it is apparent that in terms of the provisions of the Ordinance that Officers of the Reserve Force had to be mobilised and de-mobilised from time to time. section 26B(1) of the Ordinance deals with this aspect and this section reads as follows:

"The Commandant shall, on the directions of the Inspector-General of Police, mobilize such officers of the police reserve as are required to assist the police force in the exercise of its powers and performance of its duties. No such officer shall be de-mobilized by the Commandant except on the direction of the Inspector-General of Police (emphasis added)."

The provision for mobilization and de-mobilization clearly explains the rationale for a Reserve Force in the Sri Lanka Police. Since the establishment of the reservists is only for the purpose of assisting the Police Force, such mobilization is for an emergency or for a situation which requires a large number of Police Officers to carry out their functions. Therefore when the emergency or the situation that justified the mobilization of the Reserve Force is no longer in existence, it would become necessary to demobilize such officers, who were mobilized to cater for a special situation.

The fact that the Reserve Police Officers are required for an exigency is clear from section 26F of the Police Ordinance, which requires in law for all employers of such Reservists to give all facilities to undergo and render such training and service as may be required without any adverse impact to their normal careers.

It is also to be noted that an officer of the Reserve Force could use his police powers only during his mobilization. Section 26G of the Police Ordinance clearly stipulates that it would be illegal for a Reservist to wear his uniform without being mobilized.

Admittedly such conditions or restrictions such as mobilization and de-mobilization, as referred to earlier, are not applicable to the regular Force of the Sri Lanka Police in terms of the provisions of the Police Ordinance.

Learned President's Counsel for the petitioners contended that no Officer of the Reserve Force has been de-mobilized for the last 25 years and therefore that the term 'Reserve' is only a nomenclature of the past. Learned State Counsel did not dispute the fact that for a long period there has been no-demobilization of the Reserve Force. However, his position was that there has been a prolonged State of Emergency in the country requiring the Regular Police Force to carry out para military duties, enabling the Reserve Force to be mobilized over many years. His contention was that these special circumstances did not change the character of the Reserve Force.

On a consideration of the provisions pertaining to the character of the Reserve Police Force, especially regarding mobilization and de-mobilization, it is apparent that, although there has been no de-mobilization for a very long period, that has not taken away the concept of mobilization and de-mobilization of the Reserve Police Force and therefore no provision has been made for the change of the character of the Reserve Police Force. In such circumstances, merely for the reason that there has been no de-mobilization, it cannot be

considered that the reserve Police Force has been equalled to the Regular Police Force.

2. Different requirements are applicable for recruitment and for promotions in the Regular Force and Reserve Force;

On an examination of the requirements that are necessary for joining the Reserve Force, it is apparent that such requirements had been lower than what was required for the entry to the Regular Police Service. For instance, paragraph 2.2 of Sri Lanka Police Gazette No. 618A of 11.07.1990 refers to officers in the Reserve Force 'who have lesser educational qualifications than the required educational qualifications in respect of similar posts in the Regular Service' (P3).

The aforementioned Gazette Notification also draws attention to specific provisions regarding absorption of Reservists with the required educational qualifications and with lesser educational qualifications. Accordingly, paragraph 3 allows absorption of reservists with the required educational qualifications to the Regular Police Force after 3 years of satisfactory continuous service. Paragraph 4 on the other hand states that Reservists with lesser educational qualifications could be absorbed to the Regular Police Force only after 5 years of continuous service in the Reserve Force (P3).

In 1992 these requirements were amended by I.G.'s Circular No. 1044/92 dated 17.12.1992 by increasing the 3 year period to 5 years and the 5 year period into 8 year of service in the Reserve Force, respectively.

It is to be noted that in terms of I.G.'s Circular No. 1044/92, three Advanced Level passes were required to join the Reserve Police Force as a Sub-Inspector of Police (Annexure I). However, according to the affidavit of the 7th respondent and the document marked 7R1 (S.C. application No. 599/2003), which contains the details of the qualifications, date of enlistment and the date of absorption of the petitioners in S.C. (Application) No. 599/2003, indicates that out of the 27 petitioners, 19 petitioners had not qualified in the Advanced

Level Examination, 7 have passed the Advanced Level Examination and 1 petitioner had completed one subject of the said Examination. Accordingly in terms of the present criteria, some of the petitioners would not have qualified to be Sub-Inspectors in the Reserve Police Force.

3. Different terms of employment in the Regular and the Reserve Force

Until the year 1992, officers of the Reserve Police Force were paid on a daily basis and were not eligible for a pension. By I.G.'s Circular No. 1044/92 dated 17.12.1992 provision was made for the Reservists to be paid a monthly salary, provided that the period of their mobilized service was not less than 26 days for the calendar month and a complete 12 months of mobilized service for an increment. Moreover in terms of the aforesaid Circular, an Officer in the Police Reserve was entitled to a pension only after he had completed an aggregate of not less than twenty years mobilised service. Therefore the Reservists were allowed to contribute to the Widows and Orphans Pension Fund, only if and when they complete an aggregate of 20 years of mobilized service.

Considering the aforementioned circumstances, it is evident that the learned State Counsel had quite correctly contended that although there were changes in the mode of payment of emoluments and the consideration given for the Reservists to be entitled to a pension, that a reservist could still be demobilized.

It appears that the consideration given for the changes in the mode of payments of salary and the entitlement to a pension have been to accommodate the Reserve Force, who had been in long periods of service due to the prolonged situation in the country.

Accordingly it is obvious that the Regular Force and the Reserve Force still remain as two different entities. This factor is further established on a consideration of the provisions which came in along with the 17th Amendment to the Constitution. Prior to the 17th Amendment, the Public Service Commission

was empowered to appoint and promote the Police Officers. However, the Public Service Commission had no authority regarding such appointments and/or promotions of the Reserve Force and the mobilization and de-mobilization of the Reserve Force was carried out by the Inspector General of Police in terms of the Police Ordinance. Since the introduction of the 17th Amendment to the Constitution, the powers and functions regarding the appointments and transfers of the Regular Police Force was given to the National Police Commission in terms of Article 155(G)(a) of the Constitution. However, this did not include the Reserve Force and Reservists are still subject to the provisions contained in section 26B(i) of the Police Ordinance, which includes mobilization and de-mobilization and section 26(H), which deals with the recruitment, conditions of service and matters with regard to discipline.

It is thus apparent that the Regular Police Force and the Reserve Police Force do not belong to a single category, and therefore the reserve Force cannot be equalled to the Regular Police Force.

Having considered the nature of the Regular and the Reserve Force of the Sri Lanka Police let me now turn to examine whether there is any infringement in terms of Article 12(1) of the Constitution as complained by the petitioners.

Article 12(1) of the Constitution deals with the right to equality and reads as follows.

"All persons are equal before the law and are entitled to the equal protection of the law".

Equality as postulated in Article 12(1) of the Constitution means the right of a person to be treated alike among his equals and such rights to be administered equally. Equality thus means that there should not be any discrimination among those who are equally circumstanced. Thus Article 12(1) of the Constitution ensures the protection from arbitrary and discriminatory action by the executive and/or the administration. The objective of Article 12(1) of the Constitution therefore is to give persons equal treatment.

However, such guaranty does not forbid reasonable classification, which is founded on intelligible differentia. The concept of equality only forbids action which is unreasonable, arbitrary and capricious and not the classification that is reasonable. This is based on the theory that a classification which is good and valid cannot be regarded as arbitrary. The concept of reasonable classification was considered in detail in the well known decision in *Ram Krishna Dalmia v Justice Tendolkar*⁽¹⁾, where it was clearly stated that for a valid classification two conditions have to be satisfied. These conditions could be specified as follows:

- (a) that the classification must be founded on an intelligible differentia, which distinguish persons that are grouped in from others who are left out of the group; and
- (b) that the differentia must bear a reasonable or a rational relation to the objects and effects sought to be achieved.

A classification to come within the framework of Article 12(1) of the Constitution there must therefore be some rational nexus between the basis of classification and the objects intended to be achieved by such classification. In *The State of Jammu and Kashmir v Triloki Nath Rhosa and others*⁽²⁾, the question of classification of Assistant Engineers between Diploma holders and Degree holders for promotion as Executive Engineers came before the Indian Supreme Court where it was decided that such a Rule does not violate the equality Clause of the Constitution. Considering the question at issue, Chandrachud, J. in *State of Jammu and Kashmir (supra)* stated that,

"Since the Constitutional Code of equality and equal opportunity is a charter for equals, equality of opportunity in matters of promotion means an equal promotional opportunity for persons who fall, substantially, within the same class. A classification of employees can therefore be made for first identifying and then distinguishing members of one class from those of another ... though persons appointed directly and by promotion were integrated into a common class of Assistant Engineers, they could, for

purposes of promotion to the cadre of Executive Engineers, be classified on the basis of educational qualifications. The rule providing that graduates shall be eligible for such promotion to the exclusion of diploma-holders does not violate Articles 14 and 16 of the Constitution and must be upheld."

On a careful comparison of the characters of the Reserve Police Force and the Regular Police Force, on the basis of the aforementioned analysis, it is evident that they belong to two different categories without any rational nexus to link the two groups for the purpose of putting them together.

In such circumstances, it is abundantly clear that the Officers of the Regular Force and the Reserve Force belong to two different categories and therefore the decision of the respondents to include Clause 2.1.III in the undated Circular P1 cannot be regarded as unequal, unfair, arbitrary or violative of the petitioners fundamental rights guaranteed in terms of Article 12(1) of the Constitution.

I therefore hold that the petitioners have not been successful in establishing that their fundamental rights guaranteed in terms of Article 12(1) of the Constitution had been violated.

For the reasons aforementioned these two (2) applications are dismissed.

I make no order as to costs.

FERNANDO, J - I agree.

MARSOOF, J. - I agree

Applications dismissed.