

SIRISUMANA
v.
ILLANGARATNE AND OTHERS

SUPREME COURT
G. P. S. DE SILVA, C.J.
KULATUNGA, J.,
WADUGODAPITIYA, J.
JULY 03 AND JULY 10, 1995.

Constitution – Tea Control Department – Employee – Promotion Discriminatory and Violative of Article 12(1) – Merit – Seniority.

The Petitioner is the Administrative Officer, grade V attached to the Tea Small Holdings Development Authority. He complained that the promotion of the 6th Respondent to a Senior Administrative Post was discriminatory and violative of his Rights under Act, 12(1). The Petitioner obtained more marks for seniority, both had equal marks at the written test, the 6th Respondent obtained more marks than the petitioner at the interview.

Held:

The Petitioner did not allege *mala fides* or political motive against the 6th Respondent's appointment. There is no intentional or purposeful discrimination which vitiates the impugned appointment.

AN APPLICATION for infringement of Article 12(1) of the Constitution.

Cases referred to:

1. *Wijesinghe v. Attorney-General* FRD (1) at p. 40 at 45.
2. *Gunatileke v. Attorney-General* FRD (1) at 86.
3. *Weligodapola v. Secretary, Ministry of Womens Affairs* 1989 – 2 SLR 63 at 82-83.

A. H. H. Perera with Gamini Perera for the Petitioner.

Mohan Pieris, S.S.C., for respondents.

July 27, 1995.

KULATUNGA, J.

The petitioner is an Administrative Officer Grade V attached to the Tea Small Holdings Development Authority. He complains that the promotion of the 6th Respondent to a post of Senior Administrative Officer Grade IV at the Head Office with effect from 17.01.95 was discriminatory and violative of his rights under Article 12(1) of the Constitution.

The petitioner claims that on the basis of merit and seniority the appointment which is the subject matter of these proceedings should have been given to him and not to the 6th respondent.

Both the petitioner and the 6th respondent joined the Tea Control Department as clerks on 10.03.70. Next they joined the Tea Small Holdings Development Authority on 20.03.78. In the course of their career in different grades of service, each of them had gained seniority over the other alternatively, on assessment for appointment.

In the selection to the Senior Administrative Officer, Grade IV, the petitioner and the 6th respondent obtained equal marks at the written test; the petitioner obtained more marks for seniority for the reason that he was senior to the 6th respondent in grade IV; but the respondent obtained more marks than the petitioner at the interview. The final score was 63.4 for the 6th respondent and 62.8 for the petitioner. In the result, the petitioner was not selected for appointment.

The petitioner complains that on a precise calculation of their seniority in Grade IV namely, 9 years and 10 1/2 months for him and 8 years and 3 months for the 6th respondent, the petitioner should have been appointed. On that basis he claims that he would have received 64.8 marks whilst the 6th respondent would have received only 62.508 marks.

The 6th respondent in his affidavit states that in the Tea Control Department he was promoted as Grade IIA clerk before the petitioner

as the latter could not pass the promotion test. Hence, the 6th respondent became more senior at that point. In the Tea Small Holdings Development Authority the 6th respondent was promoted as Grade 1 clerk on 01.06.82 whilst the petitioner was promoted only on 15.11.83 and thus the 6th respondent was 17 months senior to the petitioner. However, when they competed for appointment to the post of Administrative Officer the petitioner received 10 marks more than the 6th respondent at the test. After interview, the petitioner was appointed, though the 6th respondent was more senior.

The 6th respondent states that the petitioner was the President of the Branch Union of the Jathika Sevaka Sangamaya (a union which enjoyed government patronage at that time). In proof of this, he has produced the document 6R2. The 6th respondent has also produced a letter dated 23.04.84 addressed by the Secretary, JSS to the then Minister of Public Administration & Plantation Industries, introducing the petitioner as a strong supporter of the government party.

The petitioner does not allege *mala fides* or political motive against the 6th respondent's appointment. There is no intentional or purposeful discrimination which vitiates the impugned appointment. See *Wijesinghe v. Attorney-General* ⁽¹⁾, *Gunatilleke v. Attorney-General* ⁽²⁾. See also *Weligodapola v. Secretary Ministry of Women's Affairs* ⁽³⁾ where Amerasinghe J. said:

"The State, as I have said before, is entitled to lay down conditions of efficiency and other qualifications for securing the best service. And when it does so, this court will not, in my opinion, insist that the classification is scientifically perfect and logically complete".

These principles apply to the case before us. On the available evidence, the alleged infringement of rights under Article 12(1) has not been established. This application is accordingly dismissed. The petitioner will pay Rs. 750/- as costs to the 6th respondent.

G. P. S. DE SILVA, J. – I agree.

WADUGODAPITIYA, J. – I agree.

Application dismissed.