

**KULATUNGA**

v.

**THE BOARD OF DIRECTORS,  
CO-OPERATIVE WHOLESALE ESTABLISHMENT (C.W.E.)**

SUPREME COURT  
SAMARAKOON, C. J., WEERARATNE, J. AND  
WANASUNDERA, J.  
S. C. 7/81  
C. A. 251/81  
L. T. 1/ADDL. 716/75  
AUGUST 14, 1981

*Retirement – Premature retirement – Circular issued by Dept. of Public Administration  
– Regulations 62 and 64 of C. W. E.*

The Circular of the Department of Public Administration though marked in evidence was not produced. Hence it is the Regulations which should apply. These two regulations 62 and 64 of the C.W.E. give an employee the option to retire when he reaches the age of 55 years but do not give the employer a reciprocal right to retire an employee on his reaching the age of 55 years. An employer may however retire an employee on the employee reaching the age of 55 years on the ground of (a) retrenchment and (b) inefficiency. The age of compulsory retirement is 60 years.

**APPEAL** from judgment of the Court of Appeal.

*H. L. de Silva for applicant-respondent-appellant.  
Mark Fernando with Q. Palliyaguru for employer-appellant-respondent.*

*Cur. adv. vult.*

November 30, 1981.

**WANASUNDERA, J.**

This is an appeal from the judgment of the Court of Appeal which has set aside the order of a Labour Tribunal awarding the appellant a sum of Rs. 19,320/- as compensation upon his being prematurely retired from employment by his employer, the respondent. The appellant had been appointed as accountant in the Co-operative Wholesale Establishment by the respondent in January 1963. In 1972 he was promoted to the post of Senior Accountant. The appellant was retired from service with effect from 28th January 1975 when he was 59 years of age.

The respondent has sought to justify this premature retirement by reference to a circular of the establishment, based on Government policy, and those grounds have found favour with the Court

of Appeal. The respondent alleges that the appellant was, at all times, subject to the rules, regulations and departmental orders of the C.W.E. and that the retirement was effected in terms of a circular dated 23rd May 1974 issued on the instructions of the Ministry of Public Administration.

This circular, it is alleged, had fixed the age of retirement at 55 years, but an extension up to 58 years of age could be given by the Minister, and further extension up to 60 could be given by the Cabinet of Ministers.

As against this, the appellant relied on two regulations of the Co-operative Wholesale Establishment and claimed a right to continue till he reached his 60th year. The Court of Appeal took the view that, since the circular reflects Government policy and the respondent is a semi-governmental institution, the circular which was later in date to the regulations would govern the rights of the parties. It was obviously the intention of the respondent to produce this circular in evidence and in fact he gave it a marking R14. But this circular however, which the Court chose to go by, "was not submitted and is not in evidence," in the words of the Court of Appeal itself. The Court of Appeal based its judgment not on the circular as such, but on certain oral statements made by two witnesses who referred to this document. On the other hand, the Labour Tribunal quite rightly ignored the circular, stating that the employer had not led "sufficient evidence" on this matter, and based its order upon an interpretation of the two regulations relied on by the appellant and held in his favour.

Those two regulations, namely regulations 62 and 64 of the Co-operative Wholesale Establishment, were produced marked A2(a) and A2(b). They are worded as follows:

"A2(a)

RETIREMENT  
OPTIONAL  
AT 55 YEARS

62. Permanent employees of the CWE will be permitted to retire if they so desire, on reaching the optional age of retirement (55 years). They may not be permitted to continue in service after reaching this age when it is possible to effect retrenchment by retiring an officer who has attained the age of 55 or his efficiency is definitely below normal.

An employee whom it is proposed to retire compulsorily for the reasons stated above should not be allowed an extension on compassionate grounds.

**COMPULSORY RETIREMENT AT 55 YEARS**      An officer who is compulsorily retired from service after reaching the age of 55 years should in ordinary circumstances, be given 3 months' notice of the date of retirement."

"A2(b)  
**AUTOMATIC RETIREMENT AT 60 YEARS**      (i) All employees shall be automatically retired on reaching the age of 60, unless the sanction of the Board of Directors has been received beforehand to retain their services after reaching the compulsory age of retirement."

Mr. H. L. de Silva has submitted that these two regulations, while giving an employee an option to retire when he reaches the age of 55, do not give the employer a reciprocal right to retire an employee on reaching 55 years. The employer however may retire an employee on the employee reaching the age of 55 years if the following two conditions are satisfied, namely, on the grounds of (a) retrenchment, and (b) inefficiency. The compulsory age of retirement is 60. This means that an employee, unless retired on those two grounds, has the right to go on till his 60th year. Mr. H. L. de Silva's submissions appear to be supported by the wording of these two regulations. Mr. Fernando for the respondent admitted that those two regulations were loosely worded and unsatisfactory, but sought to throw light on their meaning by referring to certain other regulations, which however have not been specifically marked in evidence by either party. In any event, I do not think that those other regulations he has in mind, can make much of a difference to this matter.

As stated earlier, the Court of Appeal decided this case on the basis of the alleged circular. The Court of Appeal took the view that the circular had an overriding effect and superseded the regulations relied on by the appellant. Referring to regulations 62 and 64, the court said :—

" . . . A change was thus effected by this Circular to the extent that the workman was denied the prospect he earlier enjoyed of continuing in service from his 55th till his 60th year unless retired on the special grounds set out in Rule 62. At the time the Circular was issued the workman in this case had already reached the age of 59 years. It is not the employer's case that the workman was retired on the grounds set out in Rule 62, so that the workman could have served till his 60th year."

In the absence of the proper proof of the circular, the Labour Tribunal was right in deciding this case on the basis of the regulations placed before it. For these reasons, this appeal is allowed and the judgment of the Court of Appeal is set aside.

Before I part with this case, I like to observe that an order for the payment of compensation against the respondent, which is a statutory corporation, will in all probability harm the public interest either directly or indirectly. If the respondent had intended that the legal position contended for by its counsel before us ought to prevail, then it should have taken pains to see that the regulations it relied on were drafted with care and that the relevant material was duly produced at the trial so as to achieve that object. It is vain to expect that this Court would grant special favours or dispense with the legal requirements merely because a party is a State corporation. In the present state of affairs, this Court has no option but to make the order we now make. As ordered by the Labour Tribunal, we direct the employer to deposit the sum of Rs. 19,320/-, payable to the appellant, with the Assistant Commissioner of Labour, Colombo South, on or before 30th November 1981. The appellant will also be entitled to costs both here and in the Court of Appeal.

**SAMARAKOON, C. J.** — I agree.

**WEERARATNE, J.** — I agree.

*Appeal allowed.*