

PEIRIS
v.
WIJESURIYA, DIRECTOR OF IRRIGATION AND OTHERS

SUPREME COURT
AMERASINGHE, J.,
GUNAWARDANA, J. AND
GUNASEKERA, J.
S.C. APPEAL NO. 53/98
C.A. APPLICATION NO. 458/96
SEPTEMBER 9, 1998

Writs of certiorari and mandamus – Retirement subject to Rule 12 (1) of the Minutes on Pensions.

The petitioner who was a storekeeper in the Irrigation Department was interdicted on the detection of a shortage of goods. Before disciplinary proceedings commenced the petitioner reached the age of 55 years; whereupon he was retired subject to Rule 12 of the Minutes on Pensions. Thereafter a charge-sheet was served on the petitioner. The petitioner's explanation was rejected and he was paid a reduced commuted pension after deducting the value of the shortage. The petitioner urged that no disciplinary inquiry was held observing the time limits laid down by a circular issued by the Secretary, Ministry of Public Administration and that the retirement subject to Rule 12 (1) of Minutes on Pensions was illegal as disciplinary proceedings were not pending or contemplated at the time of his retirement as required by that Rule.

Held:

The time limits laid down by the circular were directory and hence, the failure to observe them did not make the acts of the respondent invalid and though no disciplinary proceedings were pending at the time of the petitioner's retirement disciplinary proceedings were contemplated.

Case referred to:

1. *Wilbert Godawela v. Chandradasa and Others* (1995) 2 Sri LR 338 distinguished.

APPEAL from the judgment of the Court of Appeal.

L. C. Seneviratne, PC with Ronald Perera and Hemantha Situge for the petitioner.

Ms. M. N. B. Fernando, SSC for respondents.

Cur. adv. vult.

November 17, 1998.

AMERASINGHE, J.

The petitioner was a Grade I Storekeeper in the Irrigation Department in charge of the Rambawewa Stores. When the petitioner complained of the loss of a stock book which had been in his custody, the stores in his charge were sealed and a stock verification was conducted by a Board of Survey. Shortages valued in aggregate at Rs. 373,958.41 were reported by the Board of Survey. The petitioner certified that the verification was carried out in his presence and that he was satisfied with the survey. The petitioner was interdicted with effect from 29 September, 1986. The petitioner reached the age of 55 years on 7 August, 1987 and was retired from public service. By his letter dated 20 November, 1987, the Additional Director of Irrigation informed the petitioner that the petitioner had been retired subject to Rule 12 of the Minutes on Pension. A charge-sheet dated 14 December, 1987, was served on the petitioner. The petitioner's explanation was rejected, although the value of the shortages was reduced to Rs. 190,716/54. After deducting the sum of Rs. 190,716/54, the petitioner was paid a sum of Rs. 67,304/78 as his commuted pension. An appeal to the Public Service Commission for relief was refused.

The petitioner then moved the Court of Appeal for –

- (a) a Writ of Certiorari quashing the order of interdiction;
- (b) Writs of Mandamus directing the respondents to pay (i) the petitioner's salary and emoluments from the date of interdiction until the date of retirement; and (ii) the petitioner's salary and

emoluments on the basis of extensions in service the petitioner might have been entitled to until he reached 60 years of age. The Court of Appeal held that the petitioner was not entitled to the writs prayed for.

The petitioner appealed to the Supreme Court. It was urged on his behalf that the Order of interdiction should be quashed because it was not made in conformity with P17. P17 was a Circular Letter issued by the Secretary of Ministry of Public Administration addressed to "All Secretaries of Ministries and Heads of Departments: on the subject "Expeditious Disposal of Disciplinary Inquiries". The letter, among other things, stated that Disciplinary Authorities were requested to ensure that (i) the charge-sheet against an officer under interdiction is issued within one month of the date of interdiction; (2) the Tribunal of Inquiry is appointed within two weeks of receipt of reply to the charge-sheet; and (3) the disciplinary inquiry is completed within three months from the date of appointment of the Tribunal.

Admittedly, the recommended time limits were not observed. On the other hand, the time limits were not inflexible and absolute. They were expected to be followed in ordinary cases. However, the last sentence of the Circular letter contemplated cases in which the ideal standards might be departed from, for it stated that the "limits should strictly be complied with unless there is good cause which prevents compliance". As explained by the Director of Irrigation in his affidavit, "the facts of this case necessitated investigations of a considerable length of time which prevented compliance with the said Circular". In the circumstances, the failure to observe the directory time limits would not in my view render the acts of the respondents invalid.

The petitioner was retired subject to Rule 12 (1) of the Minute on Pensions which states as follows: "Where the explanation tendered by a public servant against whom, at the time of his retirement from public service, disciplinary proceedings were pending or contemplated in respect of his negligence, irregularity or misconduct, is unsatisfactory by the competent authority, the [relevant authority] may either withhold

or reduce any pension, gratuity or other allowances payable to such public servant under these Minutes".

It was not in dispute that the petitioner's explanation was regarded as "unsatisfactory". Learned counsel for the petitioner, however, submitted that not only was there no inquiry but that such an inquiry was not "contemplated" and that therefore retirement under Rule 12 was "illegal, unwarranted, *mala fide*, and in excess of the powers of the respondents.

Stock verifications had revealed certain shortages and the petitioner had been interdicted in September, 1986. There were no pending disciplinary proceedings; but I am unable to accept the view that disciplinary proceedings were not "contemplated". What was the purpose of the long-drawn-out investigations except for the purpose of precisely ascertaining the losses and fixing responsibility for such losses? This case was quite unlike *Wilbert Godawela's case*⁽¹⁾ which learned counsel for the petitioner cited. In that case there was no disciplinary proceedings pending at the time of retirement; nor were such proceedings contemplated.

For the reasons stated in my judgment, I affirm the decision of the Court of Appeal and dismiss the appeal. In all the circumstances, there will be no costs.

GUNAWARDANA, J. – I agree.

GUNASEKERA, J. – I agree.

Appeal dismissed.