

WICKRAMASINGHE
v.
CEYLON ELECTRICITY BOARD AND ANOTHER

COURT OF APPEAL.
DR. RANARAJA, J.
C.A. 696/96.
DECEMBER 4, 1996.

Writ of Mandamus/Certiorari – Employee – Extension beyond 55 years – Public duty – Statutory right – Public office.

The petitioner, an Engineering Assistant employed by the Ceylon Electricity Board applied for an extension of the services upon reaching the age of retirement on 10.10.94, and was granted an extension till 10.10.95. A further extension was sought and his services were extended till 10.4.96. The petitioner's request for a further extension was refused.

Held:

(1) The general rules of mandamus is that its function is to compel a Public Authority to do its duty. It is a command issued by a Superior Court for the performance of a public legal duty. It is only granted to compel the performance of duties of a public nature and not merely of a private character, that is to say for the enforcement of a mere private right stemming from a contract of the parties.

(2) The petitioner has failed to satisfy this court that he has a statutory right to an extension of services under the respondent.

Per Ranaraja, J.

"On the other hand to accede to the petitioner's application would mean that the 1st respondent will not be entitled to use its discretion under the circulars, to refuse the extension of service of any employee whether conduct has been found wanting ... it would be unjust to foist a unsuitable employee on the respondent for any length of time against its wishes."

AN APPLICATION for a Writ of Mandamus/Certiorari.

Cases referred to:

1. *Perera v. Municipal Council of Colombo* 48 N.L.R. 66.
2. *University Council of Vidyodaya University v. Linus Silva*, 66 N.L.R. 505.
3. *Ratnayake v. Perera* 1982 2 S.L.R. 451 at 457.

4. *Silva v. National Water Supply and Drainage Board* [1989] 2 Sri. L.R. 1.
5. *Rodrigo v. Municipal Council, Galle and Another* 49 N.L.R. 89.
6. *Wijesinghe v. Mayor of Colombo* 50 N.L.R. 87.
7. *Walker Sons Ltd., v. Gunatilleke* (70-73-80) 1 Sri. L.R. 231.

Hemasiri Withanachchi for petitioner.

S. Sriskandarajah for respondents.

Cur. adv. vult.

December 04, 1996.

DR. RANARAJA, J.

The petitioner is an Engineering Assistant employed by the 1st respondent Ceylon Electricity Board, which is a corporate body established under the provisions of the Ceylon Electricity Board Act No. 17 of 1969. The 2nd respondent is the General Manager of the 1st respondent. The petitioner had applied for an extension of his services upon reaching the age of retirement on 10.10.94. (P14) and was granted an extension till 10.10.95. By letter P15 he sought another extension. The 2nd respondent by letter dated 30.1.96 informed the petitioner that his services would be extended only for a further period of 6 months ending 10.4.96 (P16). By P16 the 2nd respondent informed the petitioner that he has not shown due commitment to his duties and it has been reported that the 1st respondent had not received any useful service from the petitioner during the past. Any further extension of his services was dependant upon improvement in the performance of his duties. The petitioner by letter P21 dated 14.6.96 applied for a further extension from 10.10.96. The 2nd respondent by letter P22 dated 28.8.96 informed the petitioner that his services are extended for a period of six months ending 9.10.96, and would be retired on 10.10.96. The Deputy General Manager of the 1st respondent by his letter (P23) dated 10.9.96 directed the petitioner to hand over any property belonging to the 1st respondent to the Electrical Engineer before he goes on retirement. The petitioner appealed by letter P24 dated 16.9.96 to the 2nd respondent to extend his services for a further period of one year from 10.10.96. The petitioner was informed by the Electrical Engineer of the 1st respondent by letter dated 20.9.96 (P29) that he would be retired on 10.10.96.

The petitioner has filed this application *inter alia*;

(a) for a writ of certiorari quashing the decisions conveyed by P22 and P23.

(b) for a writ of mandamus directing the respondent (sic) to grant an extension of services of the petitioner from 10.10.96.

The petitioner seeks to support his application on the basis of circular P25 dated 29.11.94. By that circular, the Deputy General Manager (personnel) of the 1st respondent, has informed the head of divisions *inter alia*, that it has been decided that extensions of service of CEB employees from 55 years of age to 58 to be approved within the CEB. He states that since he has reached the age of 57, he is entitled to a further extension of service.

The question that arises is whether the petitioner has a statutory right to an extension of his service which could be enforced by mandamus.

Section 31 of the Ceylon Electricity Board Act as amended provides; subject to the provisions of section 5, the Board may appoint to its staff such officers and servants as the Board may deem necessary, and determine their terms of remuneration and other conditions of employment". By letter P2 dated 14.9.81, the petitioner was appointed as a Grade II, Class A, Technical Officer (Electrical), middle level officer, subject to the terms and conditions set out therein. The title of his post was Engineering Assistant.

In *Perera v. Municipal Council of Colombo*⁽¹⁾, Nagalingam, J. followed Short in "Informations, Mandamus and Prohibition", (page 227) which lays down a general rule governing the issue of a writ of mandamus, namely, that "The applicant must have a legal right to the performance of some duty of a public and not merely of a private character" and dismissed the application of the petitioner, who was employed as a dispensary medical officer under the council, for a writ of mandamus to compel the Local Government Service

Commission to reinstate him in the post from which he had been interdicted and to pay his arrears of salary from the date of interdiction till reinstatement.

In a similar case, a university 'Teacher' was held by the Privy Council to be in the ordinary legal sense a servant of the university and certiorari and mandamus did not lie to quash an order terminating his services and reinstate him. *University Council of Vidyodaya University v. Linus Silva*⁽²⁾.

The general rule of mandamus is that its function is to compel a public authority to do its duty. The essence of mandamus is that it is a command issued by a superior Court for the performance of a public legal duty. It is only granted to compel the performance of duties of a public nature, and not merely of private character, that is to say, for the enforcement of a mere private right, stemming from a contract of the parties. – *Ratnayaka v. Perera*⁽³⁾.

"A distinction which needs to be clarified is that between public duties enforceable by mandamus, which are usually statutory, and duties arising merely from contract. Contractual duties are enforceable as matters of private law by the ordinary contractual remedies, such as damages, injunction, specific performance and declaration. They are not enforceable by mandamus which in the first place is confined to public duties" (Wade – Administrative Law 5h Ed. pg. 635).

In *Silva v. National Water Supply and Drainage Board*⁽⁴⁾, G. P. S. de Silva, J. following the passage from Wade cited above held that the Post of Accountant in the N. W. S. and D. B. is not a public office which attracts the remedy of mandamus. If the appointment is contractual, writ does not lie. See also *Rodrigo v. Municipal Council, Galle and Another*⁽⁵⁾, *Wijesinghe v. Mayor of Colombo*⁽⁶⁾. In the former case Windham, J. laid down the test as follows; The question is whether the petitioner has public duties and powers vested in him by statute, so that he can be said to be statutorily entitled to exercise them." This Court is bound by the decisions cited – see *Walker Sons Ltd. v. Gunatileke*⁽⁷⁾.

The petitioner has failed to satisfy this Court that he has a statutory right to an extension of services under the 1st respondent for a further period from 10.10.96. By P2 the petitioner has entered into a private contract to serve as an Engineering Assistant according to the terms and conditions in that letter of appointment. It is not an office created by statute with attendant legal rights to an extension of service till he reaches the age of sixty. He has no legal right to insist on the 1st respondent extending his services on the basis of a right conferred by any statutory provision. Nor is the 1st respondent under a statutory duty to extend the petitioner's services. Thus his application for relief by way of certiorari and mandamus must fail.

On the other hand to accede to the petitioner's application would mean that the 1st respondent will not be entitled to use its discretion under circular P25 to refuse the extension of service of any employee whose conduct has been found wanting. It has been stated clearly in P16 that the petitioner has not shown due diligence in performing his duties. The petitioner has in his affidavit admitted that he was once served with vacation of post notice. He was reinstated after a break in service after representations being made to the Ombudsman and Parliamentary Petitions Committee. It would be unjust to foist an unsuitable employee on the 1st respondent for any length of time against its wishes. The application is refused.

Application dismissed.