

TRINITA PERERA
v.
JAYARATNE AND OTHERS

SUPREME COURT
G. P. S. DE SILVA, CJ.,
PERERA, J. AND
SHIRANI BANDARANAYAKE, J.
S.C. APPLICATION NO. 8/96
JANUARY 26, 27 AND FEBRUARY 11, 1998.

Fundamental Rights – Post of Sub-Post Master – Appointment on a Cabinet decision – Failure to hold an interview for applicants – Pleasure Principle – Articles 12 (1), 55 (1) and 55 (4) of the Constitution.

In response to a notice dated 25.4.1995 (P2) calling for applications for the post of Sub-Post Master, Bowela Sub Post Office, the petitioner applied for the post. However the notice P2 was cancelled and the 3rd respondent was appointed to the post with the approval of the Cabinet of Ministers.

Held:

1. The "Pleasure Principle" in Article 55 (1) of the Constitution is subject to the equality provision of Article 12 of the Constitution; the power to make rules under Article 55 (4) must be interpreted so as to avoid inconsistency with Article 12 and the Rule of the Law.
2. The appointment of the 3rd respondent to the Post of Sub Post Mistress was contrary to the scheme of Recruitment and it was arbitrary, unfair and unreasonable and violative of Article 12 (1). The appointment is therefore null and void.

Cases referred to:

1. *Bandara and another v. Premachandra, Secretary, Ministry of Lands, Irrigation and Mahaweli Development and others* (1994) 1 Sri LR 301.
2. *Wijesinghe v. Attorney-General and Others* (1978 - 1980) 1 Sri LR 102.

APPLICATION for relief for infringement of fundamental rights.

A. A. de Silva with Jayalath Hissella for the petitioner.

K. Tiranagama for the 3rd respondent.

K. Siripavan D.S.G with N. Pulle S.C. for 1st, 2nd and 4th respondents.

Cur. adv. vult.

March 5, 1998.

SHIRANI BANDARANAYAKE, J.

The petitioner alleges that her fundamental rights guaranteed under Article 12 (1) were violated by the respondents, as they had appointed the 3rd respondent as the Sub Post Mistress of Bowela Sub Post Office, without considering the petitioner's application. This Court granted leave to proceed for the alleged infringement of Articles 12 (1) and 12 (2).

According to the petitioner, applications for the post of Sub Post Master of Bowela, Sub Post Office were called for by the 2nd respondent by the notice dated 25.04.1995 (P2). According to P2, the applicants should be residents of the area served by the Sub Post Office, at least for five years. Moreover, the recruitment scheme specified that the selections would be based on an interview and that the marks would be given out of 200 (P2). The petitioner avers that she possessed the required qualifications and that she submitted her application to the Sub Post Master on 24.05.1995. Furthermore, the petitioner had qualified as a registered substitute in the postal service and this, according to the petitioner, was an additional qualification. The final date for the submission of applications was 02.06.1995 and the petitioner avers that she did not receive a notification calling her for an interview. Further she avers that the 2nd respondent, by a notice dated 31.05.1995, cancelled P2.

On 12.12.1995, the petitioner's mother who was the Acting Sub Post Mistress of Sub Post Office, Bowela, received a copy of a letter dated 11.12.1995, which was sent by the 1st respondent to the 2nd respondent, directing the 2nd respondent to appoint the 3rd respondent as the Sub Post Master of Bowela, on the basis of a Cabinet decision (P6).

The position of the petitioner is that the 3rd respondent had not submitted an application for the Post of Sub Post Master of the Bowela Sub Post Office according to the terms specified in P2. Moreover, the petitioner avers that the 3rd respondent is not qualified to be appointed as she is not resident in the area served by the Sub Post Office, Bowela. Accordingly, the petitioner contends that the purported decision of the Cabinet of Ministers to appoint the 3rd respondent as the Sub Post Master, Bowela, is contrary to the Scheme of Recruitment set out in P2, and is unjust, arbitrary and violative of the fundamental rights enshrined in the Constitution.

The learned Counsel for the 3rd respondent submitted that, the 3rd respondent was politically victimized on several occasions. She was appointed to act as the Sub Post Mistress of Bambarapana in November, 1992, when the Sub Post Master of Bambarapana gave up his post due to terrorist threats. The 3rd respondent had worked in that capacity of acting Sub Post Mistress for 4 years and 11 months, until October, 1993. Though the 3rd respondent was appointed to the said post in December, 1990, her appointment had been suspended in September, 1991, due to political victimization. She had applied when applications were called for but this was rejected and the Minister's nominee was appointed on 04.10.1993. The learned Counsel for the 3rd respondent, submits that, under the Circular marked 3R1, the respondent was entitled to confirmation in service as a Sub Post Mistress on the completion of 5 years' of satisfactory service as an Acting Sub Post Mistress, irrespective of the requirements relating to age and residence. One month prior to her completion of 5 years' of service, denying her the benefit of Circular 3R1, she was removed from service for political reasons and the Minister's nominee was appointed as the Sub Post Master, Bambarapana. Although the 3rd respondent had invoked the jurisdiction of the Supreme Court and obtained an interim order restraining the authorities from removing her from the post, when the stay order was vacated on 04.05.1994, her services were terminated with effect from 31.05.1994. This was the 3rd occasion she was subjected to political victimization. However,

the 3rd respondent had made an appeal to the Prime Minister in 1994 (3R4) which was referred to the Political Victimization Committee and on the recommendation of the Committee with the approval of the Cabinet of Ministers, she was appointed as the Sub Post Mistress, Bowela, by P6.

The position of learned Counsel for the 3rd respondent was that the 3rd respondent's appointment was made in order to rectify the injustice repeatedly done to her and that it was not in violation of the petitioner's fundamental rights. He further submits that the 3rd respondent has completed 5 years' of satisfactory service and that she is entitled to be appointed irrespective of the requirement pertaining to residence in terms of P2.

The learned Deputy Solicitor-General for the 1st, 2nd and 4th respondents submitted that, although the applications were called for by P2 for the post of Sub Post Master, Bowela, on 25.04.1995, with a closing date for applications fixed for the 02.06.1995, the notice calling for applications had been cancelled on 31.05.1995. On the application made by the 3rd respondent to the Political Victimization Committee of the Ministry of Posts and Telecommunication against the manner of her termination as the Sub Post Mistress of Bambarapana Sub Post Office, the Committee had recommended her appointment to the Post of Sub Post Mistress at the Bowela Sub Post Office, which was vacant at that time. Pursuant to the said recommendation, a Cabinet Memorandum dated 03.10.1995 (1R3) was submitted for Cabinet approval and was approved on 18.10.1995 (1R4) granting authority to appoint the 3rd respondent to the Post of Sub Post Mistress at the Bowela Sub Post Office.

The position of learned Counsel for the petitioner was that when the Memorandum regarding the appointment of the 3rd respondent was submitted to the Cabinet, the Cabinet of Ministers was not notified that applications were called for the appointment of a Sub Post Master for Bowela Sub Post Office. His contention is that the 3rd respondent is not qualified to be appointed to Bowela as she is not residing in the area and by appointing the 3rd respondent to Bowela Sub Post Office, the Cabinet of Ministers has violated the fundamental right guaranteed under Article 12 (1) of the Constitution.

It is the contention of the learned Counsel for the petitioner that the equal protection of the law guaranteed in terms of Article 12 (1) of the Constitution cannot be violated by the Cabinet of Ministers. He relied on the ruling in *Bandara and another v. Premachandra, Secretary, Ministry of Lands, Irrigation and Mahaweli Development and others*⁽¹⁾, where it was held that "the 'pleasure principle' in Article 55 (1) of the Constitution is subject to the equality provision of Article 12 and mandates fairness and excludes arbitrariness". The learned Counsel's submission is that the petitioner and the 3rd respondent are equally situated and therefore the appointment of the 3rd respondent violates the petitioner's right to the equal protection of the law. With this submission, I agree.

The learned Deputy Solicitor-General for the 1st, 2nd and 4th respondents contended that there was no infringement of the petitioner's fundamental rights guaranteed under Article 12 (1) as there was no discrimination or unequal treatment of the petitioner. In support of this submission, the learned Deputy Solicitor-General relied on the ruling in *Wijesinghe v. Attorney-General and others*⁽²⁾. The petitioner in that case, was appointed as the Sub Post Mistress of Ellagawa Sub Post Office in April, 1975. She complained that her services were terminated with effect from 31st January, 1979, by the Post Master General, in consequence of a Cabinet decision, following a report of a Political Victimization Committee. In *Wijesinghe's* case it was held that 'it is only a breach of a fundamental right and not an ordinary right that calls for intervention of the Supreme Court. Every wrong decision or breach of the law does not attract the Constitutional remedies relating to Fundamental Rights.' It must be noted that *Wijesinghe's* case was decided as far back in April, 1979. It seems to that an unduly narrow and restrictive view of the scope of Article 12 (1) was taken in that case. The law has developed considerably since then.

In *Wijesinghe's* case (*supra*), the petitioner's complaint was that her services were terminated, in order to appoint a person who had been recommended by a Political Victimization Committee. In the present case, however, the petitioner had applied for a vacancy which existed at the Sub Post Office, Bowela based on an advertisement which called for applications to fill the vacancy (P2).

The petitioner's complaint is that the 3rd respondent, who was not qualified to be appointed as the Sub Post Mistress, Bowela, was appointed, by reason of the decision of the Political Victimization Committee. She contends that the 3rd respondent was appointed without calling for applications and without holding an interview. On the facts the present case is distinguishable from *Wijesinghe's* case.

The contention of the learned Deputy Solicitor-General for the 1st, 2nd and 4th respondents is that, in terms of Article 55 (1) of the Constitution, the appointment to the Post of Sub Post Master, Bowela, is held at pleasure and that the Cabinet in the exercise of its powers under Article 55 (1) could make an appointment or a termination of an appointment and that this Court would not probe into the motivations of the Cabinet, unless some infringement of the petitioner's fundamental right is involved.

The 'pleasure principle' in Article 55 (1) of the Constitution was discussed in *Bandara and another v. Premachandra, Secretary, Ministry of Lands, Irrigation and Mahaweli Development and others* (supra), where it was held:

The power to make rules under Article 55 (4) must be interpreted so as to avoid inconsistency with Article 12 and the Rule of law . . .

Furthermore, Article 4 (d) of the Constitution provides that—

The fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by ***all the organs of government*** and shall not be abridged, restricted or denied, save in the manner and to the extent hereinafter provided . . . (emphasis added)

It is my view that in *Wijesinghe*, (supra) the impact of Articles 55 (1), 55 (4) and especially Article 4 (d) of the Constitution were not considered sufficiently. The manner in which the 3rd respondent was appointed as the Sub Post Mistress, Bowela, is flawed. In my view, the manner in which the 3rd respondent was appointed to the post of Sub Post Mistress, Bowela, is contrary to the approved scheme of recruitment, is arbitrary, unfair, unreasonable and is violative of the petitioner's fundamental rights guaranteed under Article 12 (1).

For these reasons, the petitioner's application is allowed and I hold that the appointment of the 3rd respondent as the Sub Post Mistress, Bowela is null and void. The 1st and 2nd respondents are directed to make the appointment according to law. However, there will be no order for compensation and costs.

G. P. S. DE SILVA, C.J. – I agree.

PERERA, J. – I agree.

Relief granted.
