ABDUL CADER AYOOB

V.

THE INSPECTOR GENERAL OF POLICE AND OTHERS

SUPREME COURT.
FERNANDO, J.,
ANANDACOOMARASWAMY, J. AND
DR. GUNAWARDENA, J.
S.C. APPLICATION NO. 486/96
MARCH 20, 1997.

Fundamental Rights – Article 12(1) of the Constitution – Police Reserve – Police Ordinance sections 24, 25(i), 26(i) and 26B(i) – Can commandant of the Police Reserve be by passed in matter of demobilization or dismissal? – Violation of natural justice – Arbitrary, capricious and unreasonable dismissal from service – Interpretation Ordinance section 14(f).

The petitioner joined the Sri Lanka Police as a Reserve Sub-Inspector on 18.11.89. He was suspended from service on 26.12.95 and reinstated. Thereafter on 12.5.96 he was informed that his services had been invalidated on the orders of the Inspector-General of Police.

Held:

1. Under sections 24, 25(i), 26(i) and 26(B)(i) the Police Reserve to assist the Police Force was established under a Commandant.

2. The order whether for demobilization, invalidation or termination was on the direction of the Inspector-General of Police. It was in violation of Article 12(1) because it was arbitrary, capricious and unreasonable.

3. Section 14(f) of the Interpretation Ordinance applies and only the Commandant could terminate petitioners services.

4. The protection of the law which Article 12(i) guarantees is not just the protection of the **criminal law,** but of the law in general: and one aspect of that protection is precision and unambiguity in matters of vital concern to the individual.

5. Section 26B confers no absolute, unfettered or unreviewable power on the Inspector General of Police. Even if he had the power to dismiss a Reserve Police Officer, he failed in this instance to exercise it in the interests of the State, the Police Service and/or the public.

***Per* Fernando, J.:** "On the available material, the Petitioner has been separated from the Police Reserve for no reason at all. There has been a flagrant violation of his fundamental right to equality and the equal protection of the law – a violation which, in the context of present security needs, seems difficult to reconcile with the national interest".

Cases referred to:

1. *Mallows v. Commissioner of Income Tax* (1962) 66 N.L.R. 321, 323.
2. *Premachandra v. Jayawickrema* (1994) 2 Sri L.R. 90, 105.
3. *Bandara v. Premachandra* (1994) 1 Sri L.R. 301, 312.
4. *Tennakoon v. de Silva* SC (1997) 1 Sri LR 16.
5. *Jayawardene v. Wijeyetilleke, S.C.* 186/95 S.C. Minutes of 27.7.95.

APPLICATION for relief for infringement of fundamental rights under Article 12(1) of the Constitution.

Sanjeewa Jayawardena for petitioner.

W. A. Fernando for 2nd respondent.

Cur. adv. vult.

April 02, 1997.
FERNANDO, J.

The petitioner joined the Sri Lanka Police as a Reserve Police Sub-Inspector on 18.11.89, and, after training, served in that capacity at Pettah and Maradana. He was granted leave to proceed on 9.7.96 in respect of alleged violations of Articles 11 and 12(1): the first was an allegation of racial abuse and physical assault by the 2nd respondent, an Assistant Superintendent of Police, on 7.12.95, and the second was the arbitrary, capricious and unreasonable termination of his services, seemingly upon the directions of the 1st respondent, the Inspector-General of Police, on 12.5.96.

Although notices were served despatched on the 1st to 3rd respondents and the Attorney-General, the 4th respondent, only the 2nd respondent filed objections. The journal entry of 16.1.97, the third date of hearing, records the appearances on behalf of the petitioner and the 2nd respondent, and notes that "the Attorney-General is not appearing either for the 1st respondent or the 3rd respondent", but does not indicate who gave that information. It also records a request "that the Attorney-General do assist this Court as *amicus*". The hearing was fixed for 20.3.97. Although by letter dated 22.1.97, the Registrar duly conveyed that request, no officer of the Attorney-General's Department was present on 20.3.97, which was the fourth date of hearing. The 1st and 3rd respondents were absent and unrepresented.

A preliminary objection was taken by learned Counsel for the 2nd respondent that the petition was time-barred – having been filed on 12.6.96 – because the violation of Article 11 was alleged to have occurred on 7.12.95. Thereupon Mr. Jayawardene for the petitioner stated that he was not pursuing his claim under Article 11. The petition having been filed within one month of termination, the claim under Article 12(1) was not barred. While Mr. Jayawardene then stated that he was also claiming relief against the 2nd respondent, for having instigated that termination, at a later stage he abandoned that claim.

The 2nd respondent does not dispute the petitioner's claim that he had been assigned for duty on 7.12.95 at 10.00 p.m., at a road-block close to the headquarters of the Colombo Fire Brigade; that the regulations require that check-points at road-blocks be manned by an Inspector assisted by four Constables; that only three Constables had been assigned to assist him; and that of these, only one had reported for duty. Admittedly, between 10.20 and 10.40 p.m. none of the vehicles which had passed through the check-point had been checked. The 2nd respondent who was "on night-rounds duty" observed this, and reprimanded the petitioner, whose explanation was that he lacked the staff to do checks. The 2nd respondent ordered the petitioner and the other Constable to return to Maradana, and thereafter reported the petitioner's lapses of duty. The petitioner claims that, in the presence of members of the public, he was abused and assaulted by the 2nd respondent (who denies that allegation), and that he was thereafter hospitalized for seventeen days. When he reported for duty on 26.12.95, the 3rd respondent (the Officer-in-charge, Maradana) informed him that he had been suspended from service. Against that he appealed, and by Police messages of 7.3.96 and 8.3.96 he was informed that he had been reinstated with immediate effect and posted to the Foreshore Police. He was not paid for the period of suspension.

Having served for two months, on 12.5.96 he was informed of a Police message (of which a copy has been produced as P 18), which stated that the Senior Superintendent of Police (North ?) had informed the Foreshore Police by telephone that upon an order of the Inspector-General of Police the services of the petitioner had been invalidated. Although the Sinhala words used ("අවලංගු කර ඇති බව") mean invalidated, or cancelled, or annulled, this has been treated as a termination. In P 18, cages headed "Sending Operator" and "Receiving Operator" have been left blank. No charge sheet was served on the Petitioner, no inquiry was held, and no reasons were given for his summary severance from service.

The relevant provisions of the Police Ordinance are the following:

24. There shall be established a police reserve to assist the police force in the exercise of its powers and the performance of its duties.

25(i) For the purposes of this Ordinance, there shall be appointed a Commandant who shall be in command of the police reserve and be responsible for its general administration in accordance with the provisions of this Ordinance and the regulations made hereunder.

26(i) The Commandant shall, in accordance with the regulations made in that behalf, appoint to the police reserve such number of Reserve Superintendents, ... Reserve Sub-Inspectors, ... as may be determined by the Inspector-General of Police.

26B(i) The Commandant shall, on the directions of the Inspector-General of Police, mobilize such officers of the police reserve as are required to assist the police force in the exercise of its powers and performance of its duties. No such officer shall be de-mobilized by the Commandant except on the directions of the Inspector-General of Police.

(2) The notification of mobilization may be conveyed to any member of the police reserve orally or in writing or by an announcement made over the radio or by publication in a newspaper.

No submission was made that there was any regulation under the Police Ordinance which had a bearing on the matters in issue in this case.

Mr. Jayawardene's contention was two-fold. Section 26B did not authorise the Inspector-General of Police to terminate the petitioner's services, or to demobilize him, but only to direct the Commandant to demobilize him; it was the Commandant of the Police Reserve who had appointed him, and there was no express provision as to termination; accordingly section 14(f) of the Interpretation Ordinance applied; hence it was only the Commandant who could terminate his services; and that had not happened. In

any event, whether the Police message P 18 is treated as an order for demobilisation or termination, by or on the direction of the Inspector-General of Police, it was in violation of Article 12(1) because it was arbitrary, capricious and unreasonable. The Petitioner asked for reinstatement together with full back wages from the date of suspension.

In regard to the petitioner's alleged lapses on 7.12.95, it is now too late to consider whether his suspension was unlawful or improper, whether for want of an inquiry conducted in accordance with the principles of natural justice or otherwise. For the purposes of this case I must presume that for those lapses he was duly punished, that suspension for about two months was a proper and appropriate punishment, and that thereafter he was duly reinstated. Since the petitioner cannot now challenge the propriety of that suspension, neither can he claim back wages for that period.

The petitioner has expressly averred that the 1st to 3rd respondents "have singled him out for unfair and unequal treatment which is arbitrary, capricious, unreasonable and amounts to gross victimization ... [in violation of] his fundamental rights of equality and [to the] equal protection [of the] law". In view of Mr. jayawardene's concession, I do not have to consider any claim against the 2nd respondent for what was at least a constructive termination of the Petitioner's services on 12.5.96. And it is obvious that the 3rd respondent, who was at Maradana, had nothing to do with that. However, the 1st respondent has not denied those (or any other) averments in the petition, and the petitioner would have been entitled to a finding on the basis that the 1st respondent did give a direction which resulted in arbitrary, capricious, and unreasonable dismissal.

However, quite apart from the 1st respondent's failure to deny the petitioner's averments, there are several other features which independently establish the petitioner's case of arbitrary, capricious, and unreasonable dismissal.

First, the Police message P 18 refers to a direction, but there is doubt as to what the 1st Respondent actually directed:

demobilization, invalidation, or termination? To whom was that direction given? And by whom was it carried out? In the absence of express provision (cf. section 26B(2)), directions of this kind cannot be oral: they must be in writing, or, at least, an almost contemporaneous written record must be made. As observed in *Mallows v. Commissioner of Income Tax* [1] in the context of taxation:

> "the expression "the opinion of the Commissioner" specified in section 6(2)(b), must not only be entertained generally, so to say, in the mind of the Commissioner, but **the matter must be taken a step further and translated into words in a document** so as to serve as evidence to guide those functionaries who have the legal duty cast on them to determine "net annual value" for the purposes of section 6 of the Income Tax Ordinance." (emphasis added)

That direction was not produced, and there was thus no acceptable evidence as to what the Inspector-General of Police actually directed, what is worse, there was no direct communication to the Petitioner of the fact that his services were not required, and he was even left in doubt as to his status: had he been dismissed from the Police Reserve, or was it that he had only been demobilized? Can he be mobilized again, and, perhaps, called upon to serve in an operational area? The protection of the law, which Article 12(1) guarantees, is not just the protection of the **criminal** law, but of the law in general; and one aspect of that protection is precision and unambiguity in matter of vital concern to the individual. This Court cannot lightly assume that the norm is otherwise.

Second, in the absence of any contrary submission as to the applicability of section 14(f) of the Interpretation Ordinance, it seems to me that it was only the Commandant who could lawfully have demobilized or dismissed the petitioner. There is nothing to suggest that the Commandant did so, either on his own or upon a direction. The dismissal of the petitioner was therefore contrary to law.

Third, even if I were to assume that the 1st respondent, as Inspector-General of Police, did have the power to direct the petitioner's dismissal, and could have done so orally, and even by-passing the Commandant, yet section 26B confers no absolute, unfettered or unreviewable power, because:

> "There are no absolute or unfettered discretions in public law; discretions are conferred on public functionaries in trust for the public, to be used for the public good, and the propriety of the exercise of such discretions is to be judged by reference to the purposes for which they were so entrusted." *Premachandra v. Jayawickrema* [2].

That applies to powers of appointment and dismissal, and reasons are necessary: *Bandara v. Premachandra* [3], and *Tennakoon v. de Silva* [4]. See also *Jayawardene v. Wijeyetilleke* [5].

> "Respect for the Rule of Law requires the observance of minimum standards of openness, fairness, and accountability, in administration; and this means – in relation to appointments to, and removal from, offices involving powers, functions and duties which are public in nature – that the process of making a decision should not be shrouded in secrecy, and that there should be no obscurity as to what the decision is and who is responsible for making it."

I hold that even if the 1st respondent did have the power to dismiss a Reserve Police Officer, in this instance he failed to exercise it in the interests of the State, the Police service and/or the public. If the 1st respondent had dismissed the petitioner because of his lapses on 7.12.95, not only was it arbitrary and unreasonable to inflict a second punishment for the same offence, but summary dismissal without charge or inquiry patently violated the principles of natural justice and of proportionality. There was neither plea nor evidence that summary dismissal was for a subsequent offence, and this Court cannot assume that it was: because the burden was on the 1st respondent to have furnished material to explain and justify

his action (*Silva v. Premachandra*, at 312 (*supra*)) . On the available material, the petitioner has been separated from the police reserve for no reason at all. There has been a flagrant violation of his fundamental right to equality and the equal protection of the law – a violation which, in the context of present security needs, seems difficult to reconcile with the national interest.

I therefore hold and declare that the petitioner's fundamental right under Article 12(1) has been infringed by the 1st respondent. I direct his immediate reinstatement, without a break in service, and with full back wages from 12.5.96, and compensation and costs in a sum of Rs. 75,000/- payable by the State. The 1st respondent is directed to inform the Registrar of this Court, on or before 30.4.97, that these directions have been complied with.

ANANDACOOMARASWAMY, J. – I agree.

DR. GUNAWARDENA, J. – I agree.

Relief granted
Reinstatement with back wages
and compensation ordered.