

WILBERT GODAWELA
v.
S. D. CHANDRADASA AND OTHERS

SUPREME COURT.
FERNANDO, J.
AMERASINGHE, J.
SILVA, J.
S.C. APPLICATION NO. 208/95/FR
NOVEMBER 27TH, 1995.

Constitution – Article 12(1) withholding of pension – Public Administration Circular No. 29/90 – Minutes on Pensions, Section 12 (1), Section 43A – Ordinance No. 2 of 1942, Section 2.

The Petitioner entered the Public Service on 12, January 1956. On 6, October 1994 he received two letters dated 5, October 1994 addressed to him by two Secretaries, informing him that he was with immediate effect transferred to the Ministry.

At the time of the receipt of these letters the Petitioner was the Government Agent Trincomalee and was on his last extension of service which was to have ended on reaching his age of retirement on 22, November 1994. In the circumstances, the Petitioner responded to the letters of the two Secretaries by seeking permission to avail himself of leave prior to retirement with effect from 7, October, 1994.

By letter dated 9, June 1995, to which was annexed a copy of a letter dated 15, March 1995, the 1st Respondent informed the Petitioner that the Secretary to the Ministry of Public Administration had informed him that the Public Service Commission had ordered that the Petitioner be retired under Section 12 of the Minutes on Pensions.

Held:

(1) Although, according to the 1st Respondent's letter of 15, March 1995 and the letter of the Secretary, Ministry of Public Administration dated 27, May 1995, the Petitioner was supposed to have been retired in terms of Section 12 (1) of the Minutes on Pensions, there is no provision for retiring a person under Section 12 (1).

(2) In the case of the Petitioner, he retired by operation of law, automatically when he reached the prescribed age of retirement without the intervention of any person or authority.

(3) What, Section 12 (1) is concerned with is the matter of withholding or reducing the pension of an officer who has retired in the circumstances specified.

(4) A pension could in terms of Section 12 (1) be withheld or reduced only where –

(1) at the time of his retirement from the public service disciplinary proceedings were “pending or contemplated”, and,

(2) where the explanation tendered by the Public Servant concerned is considered to be unsatisfactory.

(5) In the matter before us there was no disciplinary proceedings pending at the time of retirement. Nor were such proceedings contemplated.

(6) It is only if an explanation tendered by the Public Servant concerned is unsatisfactory that his pension could be withheld or reduced.

APPLICATION for infringement of Fundamental Rights.

Tilak Marapana, P.C., with Nalin Ladduwahetty for Petitioner.

S. Mahenthiran for 2nd Respondent,

G. P. Dep, S.S.C. for 1st and 3rd to 14th Respondents.

December 07th, 1995.

AMERASINGHE, J.

The Petitioner entered the Public Service on 12th January 1956. He first served in the General Clerical Service. In 1975 he was appointed to the Sri Lanka Administrative Service and on 1st January 1992 he was promoted to Class 1 of that Service.

On 6th October 1994 the Petitioner received a letter dated 5th October 1994 addressed to him by the Secretary, Ministry of Public Administration and a letter dated 5th October 1994 addressed to him by the Secretary Ministry of Home Affairs, Provincial Councils and Co-operatives, informing him that he was with immediate effect transferred to the Ministry. At the time of the receipt of these letters the Petitioner was the Government Agent Trincomalee and was on his last extension of service which was to have ended on reaching his age of retirement on 22nd November 1994. In the circumstances, the Petitioner responded to the letters of the two Secretaries by seeking permission to avail himself of leave prior to retirement with effect from 7th October 1994.

By his letters dated 4th November 1994 and 9th December 1994 addressed to his successor at Trincomalee, namely the 1st Respondent, the Petitioner requested that the processing and payment of his pension should be expedited. An exchange of correspondence between the Petitioner and the First Respondent followed in which the 1st Respondent maintained that the matter of the pension could not be proceeded with since volume 2 of the Petitioner's Personal File was with the Petitioner. The Petitioner replied that the relevant file was not with him and furnished the required information which was supposed to be in the missing file. The 1st Respondent insisted that the file was with the Petitioner and reiterated that it would not be possible to process the pension papers without the file. The Petitioner thereafter communicated with the Secretary to the Ministry of Public Administration and the Deputy Director of Combined Services informing them that the payment of his pension was being delayed on the alleged ground that volume 2 of his Personal File was with him whereas that was not the case. The

Petitioner further informed them that the necessary information which was supposed to be contained in that file had been furnished by him. He urged that he should be paid at least 70% of his pension in terms of Public Administration Circular No. 29/90 of 15th June 1990.

That Circular is entitled "Expediting the award of the pensions". It explains the difficulties experienced by public servants as a result of delays in the payment of pensions caused by the absence of relevant information, and prescribes a two-stage procedure for payment to obviate those difficulties. Paragraph 2.111 states that "a temporary pension of 70% of the full pension will be paid within one month from the date of retirement of an officer so that there will be no break in his income." It is further provided that. "a full pension will be paid not more than three months after retirement." The Circular, which was issued under the hand of the Secretary, Ministry of Public Administration, concludes with the following words: "Heads of Departments and All officers dealing with pensions are kindly requested to treat the question of the rapid disposal of pensions with humanity and sympathy. The persons with which this circular concerns itself are colleagues, who, in the large majority of cases have served in the Public Service honourably and faithfully. We should make every effort to ensure that their last years on this earth are made free from want and financial burden. I do hope, therefore, you will give me your utmost co-operation in implementing these proposals. ..."

On 2nd June 1995, the Petitioner received a copy of a letter dated 27th May 1995 addressed to the 1st Respondent namely, the Government Agent of Trincomalee by the 4th Respondent, namely, the Secretary, Ministry of Public Administration. It was indicated that the payment of the Petitioner's pension was being delayed on account of disciplinary proceedings which had been commenced against the Petitioner shortly before his retirement being not yet concluded. It was alleged that the Petitioner had been retired under Section 12 (1) of the Minutes on Pensions. The 1st Respondent was directed to submit a Charge Sheet. The Petitioner informed the 4th Respondent by his letter of 5th June 1995 that no disciplinary inquiry had been commenced against him prior to his retirement, and that up

to date no charges had been framed against him. Once again he urged that he be paid at least a reduced pension to enable him to support himself. By his letter dated 9th June 1995, to which was annexed a copy of a letter dated 15 March 1995, the 1st Respondent informed the Petitioner that the Secretary to the Ministry of Public Administration had informed him that the Public Service Commission had ordered that the Petitioner be retired under Section 12 of the Minutes on Pensions.

On 30th June 1995, the Petitioner filed an application in this Court praying, *inter alia*, that the Court should grant him leave to proceed in respect of the violation of his fundamental Rights guaranteed by Article 12(1) of the Constitution, and that the Court should make an interim Order directing the payment of 70% of his pension in terms of Public Administration Circular No. 29/90 of 15th June 1990.

Leave to proceed was granted on 7th July 1995 and the interim relief prayed for was granted on 27th July 1995.

Section 12(1) of the Minutes on Pensions provides as follows:

"12(1) 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 considered to be unsatisfactory by the competent authority, the Permanent Secretary, Ministry of Public Administration, Local Government and Home Affairs may either withhold or reduce any pension, gratuity or other allowance payable to such public servant under these Minutes.

Although, according to the 1st Respondent's letter of 15 March 1995 and the letter of the Secretary, Ministry of Public Administration dated 27th May 1995, the Petitioner was supposed to have been retired in terms of Section 12(1) of the Minutes on Pensions, there is no provision for retiring a person under Section 12(1). In the case of the Petitioner, he retired by operation of law, automatically when he reached the prescribed age of retirement without the intervention of

any person or authority. What Section 12(1) is concerned with is the matter of withholding or reducing the pension of an officer who has retired in the circumstances specified.

It will be seen that a pension could in terms of Section 12(1) be withheld or reduced only where (1) at the time of his retirement from the public service, disciplinary proceedings were “pending or contemplated”, and (2) where the explanation tendered by the Public Servant concerned is considered to be unsatisfactory. In the matter before us there were no disciplinary proceedings pending at the time of retirement. Nor were such proceedings contemplated. What had happened was that a petition dated 1st September 1994 had been sent by one Leelasena Galappaththy to the Prime Minister with copies to various others making certain allegations against the Petitioner. However, there is no evidence to show that the allegations were seriously taken and acted upon in a manner which was indicative of the fact that disciplinary proceedings against the Petitioner were envisaged or likely. Had such proceedings been contemplated and, that was the reason for withholdings the pension, it is difficult to understand why that reason was not given in the first place, and why instead, the failure to pay the pension was persistently attributed to the loss of volume 2 of the Petitioner’s Personal File.

Moreover, it is only if an explanation tendered by the Public Servant concerned is unsatisfactory that his pension could be withheld or reduced.

The Petitioner was officially informed that the withholding of his pension was based on Section 12(1) of the Minutes on Pensions only on 2 June 1995 when he received a copy of the letter dated 27, May 1995 addressed by the Secretary of the Ministry of Public Administration to the Government Agent of Trincomalee. A charge Sheet dated 31, August 1995 was served two months after proceedings had been commenced in this Court in respect of the infringement of the Petitioner’s Fundamental Rights. It has not been suggested that in compliance with the provisions of Section 12(1) of the Minutes on Pensions, the decision to withhold the pension was

made after the Petitioner's explanation had been called for, duly considered, and rejected as unsatisfactory.

The manner in which Section 12 of the Minutes on Pensions is to be applied is set out in Annex III to Public Administration Circular 29/90 as follows:

"In the case of a public officer against whom disciplinary proceedings were pending or contemplated (i.e., where a Charge Sheet has not been served) at the time of retirement from the public service:

- 1.11 Where no *prima facie* case is established, the retirement subject to Section 12 of the Pensions Minute should be converted to normal retirement and recommendations made to the Director of Pensions, within three months of the officer retiring.
- 1.12 Where a *prima facie* case has been established the Disciplinary Authority should issue a Charge Sheet within one month of the date of retirement. The officer should be informed that it is in his own interest to give a full and complete explanation, as he would have no opportunity of offering any further explanation. He should be given two weeks to submit his explanation.
- 1.13 If the Disciplinary Authority considers the officer's explanation satisfactory, action should be taken as specified in para 1.11 above.
- 1.14 If he considers the explanation unsatisfactory, no action should be taken to hold an inquiry, but the Head of Department concerned should send a report to the Director of Pensions setting out:
 - 1.14.1 the charges or the matters on which the explanation was called for;
 - 1.14.2 the explanation tendered;
 - 1.14.3 the views of the Head of Department on the explanation.

1.15 The Director of Pensions will make a decision thereafter on the withholding or reducing of any pension, gratuity or other allowance payable to the officer under the Minutes on Pensions...”

In the matter before us neither the provisions of Section 12 of the Pensions Minute nor the procedures laid down for its application in Public Administration Circular No. 29/90 have been observed. In my view the Petitioner's pension has been withheld in an arbitrary manner and he is justified in complaining that the Minutes on Pensions which is a part of the “written law” of Sri Lanka (see Section 2 of Ordinance No. 2 of 1942) has not been applied to him. Consequently he has been denied the equal protection of the law guaranteed by the Constitution.

For the reasons set out in my judgment, I declare that the 3rd – 13th Respondents have violated Article 12(1) of the Constitution.

I make order setting aside the decisions and directions made by any or several of the Respondents to withhold or reduce the pension of the Petitioner without prejudice to the rights of the State under any law, including Section 43A of the Minutes on Pensions.

I direct the State to pay within one month the Petitioner his arrears of pension from the date of his retirement, including any sums withheld as a result of complying with the order of this Court on 27, July 1995 directing the payment of 70% of the pension to the Petitioner.

I further direct the State to pay the Petitioner a sum of Rs. 15000 as costs.

FERNANDO, J. – I agree.

SILVA, J. – I agree.

Relief Granted.