PRIYANTHA AND OTHERS
v
CEYLON PETROLEUM CORPORATION AND OTHERS

SUPREME COURT
FERNANDO, J.
ISMAIL, J. AND
JAYASINGHE, J.
S.C.NO.103/2002 FR
2 JULY, 2003

Fundamental Rights – Termination of petitioners' services on a Cabinet decision – Applicability of the Cabinet decision to the petitioners – Constitution, Article 12(1).

The services of the petitioners were terminated in January 2002 pursuant to a Cabinet decision dated 26.12.2001 which nullified all appointments and promotions during the period between the dissolution of Parliament and the General Election of 2001.

The petitioners were Security Assistants who had been recruited on contract in and after 1988. They participated in an "industrial action" in August 2000 demanding permanent employment and their services were summarily terminated on 22.8.2000.

During the period between the dissolution and General Election they were reinstated on 17.12.2001 on the same terms and conditions. Thereafter they were made permanent with effect from 01.10.2001.

Held :

The Cabinet decision which nullified "appointments and promotions" during the elevant period had no application to the petitioners. Hence the termination of their services was violative of Article 12(1) of the Constitution.

Per Fernando, J.

"It is clear that the mischief at which the Cabinet decision was legitimately directed was the burdening of the corporation by recruiting surplus staff and giving improper promotions".

APPLICATION for relief for infringement of fundamental rights.

Chandima Weerakkody with *Nandun Fernando* for petitioners.

Upul Jayasuriya with *Nalin Laduwahetty* for respondents.

Cur.adv.vult

September 12, 2003

FERNANDO, J.

The petitioners complain that their fundamental rights under Article 12(1) were infringed by the Ceylon Petroleum Corporation, the 1st respondent, by the termination of their services by letters dated 12.01.2002. Those letters gave as the reason for termination that the Cabinet of Ministers had decided on 26.12.2001 that all appointments and promotions during the period between the dissolution of Parliament and the General Election of 2001 should be invalidated.

The petitioners were Security Assistants who had been recruited (mainly in and after 1998) on a contract basis for an indefinite period. They participated in an "industrial action" on 21st to 23rd August 2000 demanding permanency in employment, and their services were summarily terminated by letters dated 22.8.2000.

During the period between dissolution and General Election, by letters dated 17.10.2001 the Personnel Manager of the 1st respondent (with the prior approval of the then Chairman) informed the petitioners that they had been re-instated on the same terms and conditions. Thereafter, in pursuance of a Public Administration Circular providing for the grant of permanency to casual, temporary and contract employees who had completed a continuous period of service of not less than 180 days, the petitioners were informed that they had been made permanent with effect from 01.10.2001. Those letters stated that permanancy was subject to their having completed 180 days of continuous service prior to 01.10.2001, their having the qualifications stipulated on the approved scheme of recruitment, and there being vacancies in the approved cadre. The respondents have not placed any material to show that the petitioners had failed to satisfy those conditions and/or that the termination of their services was on one of those grounds.

Although it is true that on 26.12.2001 the Cabinet did take a decision to invalidate all appointments made during the relevant period, yet on 30.01.2002 the Cabinet decided to suspend its previous decision and to review all appointments and promotions in order to determine whether any of them had been made outside the normal procedures.

Learned Counsel for the petitioners contended that the Cabinet decision of 26.12.2001 was not applicabe to them but only to "appointments and promotions", while in their case there were neither appoinments nor promotions, but only "re-instatement in service". It is clear that the mischief at which the Cabinet decision was legitimately directed was the burdening of the Corporation by recruiting surplus staff and granting improper promotions. The summary dismissal of the petitioners for industrial action may well have been considered a disproportionate penalty, for which re-instatement was justified. I hold that the Cabinet decision was inapplicable to the petitioners.

But even if it is assumed that the Cabinet decision of 26.12.2001 did apply to "re-instatements", the petitioners must nevertheless succeed. Firstly, that decision would have been arbitary if it purported to apply to a *bona fide* re-instatement in service pursuant to a review of a dismissal. Secondly, when that decision was varied on 30.01.2002, the 1st respondent was obliged to re-examine its previous decision to terminate the services of the petitioners because the legal justification for that decision had disappeared.

I therefore hold that the termination of the services of the petitioners by letters dated 13.01.2002, and the failure to rescind such termination after the second Cabinet decision was arbitrary and unreasonable, and in violation of Article 12(1). I order the re-instatement of the petitioners with effect from 1st October 2003, without a break in service but without back wages, and direct the 1st respondent to offer the petitioners the benefit of any voluntary retirement scheme, which was offered to other employees holding comparable posts, and which was in force in and after 13.01.2002. The 1st respondent will pay the petitioners one set of costs in a sum of Rs. 25,000/-

ISMAIL, J. – I agree.

JAYASINGHE, J. – I agree.

Relief granted.