GUNARATNA

v.

PEOPLE'S BANK AND OTHERS

SUPREME COURT
S.N. SILVA, CJ.
BANDARANAYAKE, J. AND
ISMAIL, J.
SC APPLICATION NO. 514/99
06TH DECEMBER, 2000

Fundamental rights - Termination of services - Different punishments imposed in disciplinary proceedings - Article 12(1) of the Constitution.

The 1st respondent Bank after due inquiry, took disciplinary action against five employees including the petitioner on the basis of certain irregular transactions. The services of the petitioner and three other employees were terminated, while the services of one Rajendra, who was on extension of service was terminated by the refusal of further extension for him.

Held :

The inequality to offend the principle of equality must be actually and palpably unreasonable and arbitrary.

Per Bandaranayake, J.

> "Although charges laid against two persons are the same, where there is a discretion in imposing punishment, the degree of culpability of each person should be considered and different punishments may be imposed. This is a permissible and valid differentiation being in no way inconsistent with the equal protection of the law guaranteed by Article 12(1)"

Cases referred to :

1. *Wijesinghe v. The Attorney-General* (1978-79-80) Sri LR 102
2. *Ceylon Paper Sacks Ltd. v. Janatha Estate Development Board* (1993) BALJ Law Reports Vol. V Part I Pg. 6
3. *Ratnayake v. The Attorney-General* (1997) 2 SRI LR 98
4. *Perera v. Montague Jayawickrama* (1985) 1 Sri LR 285 at Pg. 300
5. *Jayasinghe v. Attorney-General* (1994) 2 A Sri LR 74

6. *Ram Krishna Dalmia v. Justice Tendolkar* AIR (1958) SC 538
7. *Lachman Das Kewal Ram v. State of Bombay* AIR (1952) SC 235
8. *Arkansas Gas Co. v. Railroad Commission* 261 US 379 at 384

APPLICATION for relief for infringement of fundamental rights.

Romesh de Silva, P.C. with *Geethaka Gunawardena* for petitioner.

Gomin Dayasri with *Ms. Mali Jinadasa* for respondents.

Cur. adv. vult.

July 25, 2001.
SHIRANI A. BANDARANAYAKE, J.

The Petitioner was a career officer of the 1st respondent Bank. He joined the Bank in 1962 as a Clerk and later was promoted to the position of Assistant Regional Manager of the Bank. In November 1993, while he was serving in the post of Assistant Regional Manager, he was served with a charge sheet containing nine charges (A). In March 1996 he was served with an amended charge sheet containing 10 charges (F). By letter dated 10. 07. 1996, the petitioner was placed under interdiction without pay, on the alleged grounds of irregularities committed by the petitioner in granting overdraft facilities to one Translanka Investments Ltd. (hereinafter referred to as TIL) (H). Along with the petitioner four other officers were also served with charge sheets. However, according to the petitioner, only two of those officers were interdicted. Although all five officers had given explanations, they were not accepted by the Bank and formal inquiries were held against all of them.

The petitioner alleges that the charge sheet served on V. Rajendra, Regional Manager (Inspection and Branch Supervision) contained identical charges as that of the amended charge sheet served on the petitioner. However, according to the petitioner, the said Rajendra was not interdicted. At the inquiry the petitioner was found guilty of four charges out of ten whereas the said Rajendra was found guilty of seven out of ten charges. The 1st respondent Bank thereafter dismissed the petitioner by letter dated 17. 05. 1999, with effect from 10. 07. 1996, but the said Rajendra was allowed to retire from service with all retirement benefits. Although the petitioner had requested an opportunity to make representations to the Board of Directors regarding his dismissal, his services were terminated without granting this opportunity.

The petitioner submitted that he was 57 years of age with an unblemished career at the 1st respondent Bank for 34 years, at the time of his termination of services. He alleged that he had not received equal protection of the law, due to the following reasons :

1. the petitioner was interdicted without pay, while the said Rajendra was not interdicted, but allowed to continue in service until he was 56 years of age;

2. the petitioner was interdicted without pay contrary to the provisions of the Disciplinary Code of the 1st respondent Bank;

3. while the petitioner was dismissed from service, the said Rajendra was allowed to retire with all retirement benefits even though he was found guilty of seven charges;

4. although the General Manager of the 1st respondent Bank was of the view that the petitioner should not be dismissed from service, the petitioner was dismissed contrary to the provisions of the Disciplinary Code;

5. the recommendations of the Inquiring Officer had not been taken into consideration by the 1st respondent and/or the 2nd to 11th respondents.

The petitioner accordingly alleges that by the said action of the 1st respondent Bank, his fundamental rights guaranteed under Articles 12 and 14 of the Constitution and more particularly by Article 12(1) had been violated.

This Court granted leave to proceed in respect of the alleged infringement of Article 12(1) of the Constitution.

The grievance of the petitioner is that he has been subjected to unequal treatment by the 1st respondent Bank. The basis of the petitioner's complaint is that at a time when the petitioner and Rajendra were 'similarly circumstanced', the petitioner was treated unequally, in violation of Article 12(1) of the Constitution.

The charges against the petitioner are in respect of transactions conducted at the Queens Street Branch of the 1st respondent Bank and relate to the period 01. 01. 1993 to 09. 07. 1993. The 1st respondent Bank claims that the said transactions caused a loss of Rs. 72.85 million.

It is the position of the petitioner that the relevant transactions relate to two companies, namely TIL and Radhika Enterprises. TIL maintained two Bank accounts at the Queens Street Branch and was given Bill purchasing facilities. Cheques drawn by TIL were presented through the clearing system to the account of the said Company. At the time the cheques were presented, there was no money in the account, but the Bank Manager permitted the cheques to be realised as was the practice which was prevailing on the basis that TIL would deposit all monies to cover the said cheques prior to the end of the day. In keeping with this practice, TIL deposited money to cover all cheques prior to the end of the day.

In these circumstances, it was apparent that,

a. each cheque presented was a request for an overdraft;

b. the Bank Manager had the discretion to permit such an overdraft which in fact he had permitted; and

c. the Bank account of TIL was never overdrawn at the end of the day.

The respondents have made comprehensive submissions on the transactions of TIL with the 1st respondent Bank. According to the respondents, the cheques drawn by TIL which were presented to the Bank were paid in the morning without sufficient funds in the respective accounts. Randika Enterprises cheques were deposited to the TIL account and purchased after Banking hours so that those cheques could not be presented for clearing on the same day. The only signatory of the cheques drawn by Randika Enterprises on Seylan Bank of Old Moor Street Branch was the Commercial Manager of TIL and one of the authorised signatories of the Current Accounts maintained with People's Bank, Queens Street Branch. The Branch Manager of the Queens Street Branch purchased the cheques from Randika Enterprises exceeding the limit of Rs. 15,000,000/- drawn in favour of TIL on Seylan/Sampath Bank cheques. By this transaction TIL received immediate credit before the cheques were realised. The cheques drawn by TIL which were presented to the Bank were paid in the morning without sufficient funds. Randika Enterprises cheques were despatched to the TIL account and purchased in the evening so that cheques could not be purchased for clearing on the same day.

A report dated 21. 07. 1993 was sent by an Inspector (Branches) to Assistant General Manager (Inspection) through the Chief Inspector (Branches) on the purchase of cheques to TIL at People's Bank Queen's Streets Branch. In this report, which runs into 23 paragraphs, the following observations were made :

". . . According to the reports . . . majority of the cheques drawn by M/S Translanka Investments Ltd., on both accounts (A/C 1140202379 and 1140202642) didn't have sufficient funds. At this stage the Branch Manager should take a decision to either honour those cheques by granting temporary overdrafts or to dishonour those cheques.

The branch has not dishonoured the cheques, but retained the cheques without creating an overdraft to the accounts under special passwords from the Manager.

Settlement clearing should reach the S.L.A.C.H before 12.00 noon. In majority of the cases the drawer (i.e. M/S Translanka Investments Ltd.) didn't make any deposits (i.e. cheques or cash) to enable the branch to honour such cheques.

Since no deposits had been made by the drawer, and the branch had not dishonoured the cheques, it is considered that the branch had paid those cheques under unauthorised temporary overdraft, although it has not been reflected in the current account ledger print out.

. . . The mode of this operation is purely for the purpose of obtaining credit without any adequate security. This operation had started on a small scale in January 1993 (somewhere on the 27^{th}) and they were able to increase the credit up to Rs. 86,114 million as at 1993. 07. 09 as at the day of our inspection. Now the amount unpaid is Rs. 83,739 million (R2)."

It is common ground that in respect of these irregular transactions, the 1^{st} respondent instituted disciplinary proceedings against five employees of the 1^{st} respondent Bank. These five employees included the Manager and the second officer in charge of the Queens Street Branch, the Regional Manager of the Colombo Inner Region (Credit and Administration), the Regional Manager of the Colombo Inner Region Inspection and Branch Supervision and the petitioner, who was the Assistant Regional Manager Colombo Inner Region. Rajendra was the Regional Manager Colombo Inner Region (Inspection and Branch Supervision). According to the respondents, the 1st respondent Bank, after a due inquiry, took disciplinary action against all five employees who were found guilty. This included the petitioner as well as the said Rajendra. The services of the petitioner and the other three employees were terminated while the services of Rajendra, who was on extension of service, was terminated by the refusal of a further extension for him.

The petitioner as the Assistant Regional Manager (Colombo Inner Region) was responsible for the supervision of the credit facilities of the Queens Street Branch during the period the said irregular transactions took place. These transactions in question related to the irregular and improper granting of credit facilities which ultimately led to the loss of Rs. 83,739 million. The five officers of the 1st respondent Bank who received charge sheets relating to the said transactions were closely connected to the functions of the Bank Branch and the transactions in question. The alleged transaction took place during a period of seven months, spanning from January to July 1993. It was the position of the respondents that the services of all those employees who were directly responsible and involved during the entire period of seven months the alleged transactions took place, on an almost daily basis, were terminated by the 1st respondent. This clearly included the petitioner.

The position taken up by the 1st respondent Bank is that Rajendra's duties as Regional Manager (Colombo Inner Region - Inspection and Branch Supervision) consisted of Inspection and Branch Supervision in the Branches of Colombo Inner Region. The respondents claim that the granting of credit facilities to TIL did not fall within the purview of Rajendra's substantive post and therefore he was not directly involved in the transaction in question, except for a brief period of 15 days out of a period of 7 months, where he acted for the Regional Manager (Colombo Inner Region - Credit and Administration). Nevertheless, it is to be noted that the 1st respondent Bank took disciplinary action against Rajendra.

At the time this incident occurred, Rajendra who was on his 1st extension, was not granted an extension of service and was made to retire.

It is also common ground that the petitioner was functioning as the Assistant General Manager (Colombo Inner Region) and was responsible for the supervision of the credit facilities of the Queens Street Branch. His duties included the supervision of granting of credit facilities to customers of the Banks falling within his region. Throughout the period these irregular transactions took place, viz., from January 1993 to July 1993, the petitioner was functioning in the said post. There is no evidence to show that the petitioner had at any stage prevented these irregular transactions from taking place or detect any of these irregular transactions. Rajendra, who was the Regional Manager (Colombo Inner Region - Inspection and Branch Supervision) had acted for the Regional Manager (Colombo - Inner Region - Credit and Administration) only for a brief period during May and June 1993. Due to the limited period he acted, Rajendra could not have been in a position to obtain knowledge of the transactions carried out by TIL.

Learned Counsel for 1st to 11th respondents submitted that in the context of this case where a difference in treatment is alleged, in order to establish a violation of Article 12(1) of the Constitution, the petitioner must not only prove that he has been adversely affected, but also that he has been treated less favourably than those who are similarly circumstanced without any reasonable or rational basis.

In support of this contention, the learned Counsel relied on

Wijesinghe v. The Attorney General,[1] *Ceylon Paper Sacks Ltd., v. Janatha Estate Development Board,*[2] *Ratnayake v. The Attorney General,*[3] *Perera v. Montague Jayawickrama,*[4] and *Jayasinghe v. The Attorney General,*[5] In *Jayasinghe v. The Attorney General(supra)*, the Court held that, "It is not enough for the petitioner to show that he has been denied the protection of the law. He must also show that he has been denied equal protection-that he was treated less favourably than others similarly situated."

Discussing the provisions in the Indian Constitution and the principles applicable to situations where equal treatment is in question, Jain Kagzi is of the view that,

"The equals should not be placed unequally; and at the same time unequals should not be treated as equals in matters of promotion, retirement benefits etc., The equal opportunity requires that men placed similarly should be treated similarly. The subjection of unequals to the same rules for appointment through promotion and the payment of gratuity and pension should not be 'per se' discriminative. Equal opportunity is for equals, that is to say, those who are similarly circumstanced in life. (The Constitution of India, 5th edition, Pg. 238)."

Article 12(1) of the Sri Lankan Constitution guarantees equal protection of the law. It requires that all persons similarly circumstanced shall be equally treated. However, this does not imply that each act of different treatment amounts to an infringement. A classification or a differentiation based on reasonable grounds would be lawful and valid. In *Ram Krishna Dalmia v. Justice Tendolkar,*[(6)] and *Lachman Das Kewal Ram v. State of Bombay,*[(7)] it was stated that, 'for a classification to be good and valid and not arbitrary, it should always be founded upon some differentia. For this purpose, two conditions will have to be satisfied, viz:

a. the classification must be founded on an intelligible differentia which distinguish persons that are grouped in from others who are left out of the group; and

b. that the differentia must bear a reasonable, or a rational relation to the objects and effects sought to be achieved.

In *Arkansas Gas Co. v. Railroad Commission,*[8] it was said that,

> "Inequality per se does not violate equal protection, for every selection of persons for regulation pronounces inequality in some degree. The inequality to offend the principle of equality must be actually and palpably unreasonable and arbitrary."

In these circumstances, I am of the view that the petitioner has not made out that he and Rajendra were similarly situated or equally circumstanced. Nor has the petitioner shown that he has been differently treated from Rajendra without any reasonable basis. Rajendra and the petitioner have been found guilty of acts of misconduct constituting a breach of discipline. The difference in treatment is clearly referrable to the degree of culpability in relation to their respective acts and omissions. Although charges laid against two persons are the same, where there is discretion in imposing punishment, the degree of culpability of each person should be considered and different punishments may be imposed. That is a permissible and valid differentiation being in no way inconsistent with the equal protection of the law guaranteed by Article 12(1). The petitioner has failed to establish a violation of Article 12(1) of the Constitution. This application is accordingly dismissed, but in all the circumstances without costs.

S.N. SILVA, CJ. - I agree.

ISMAIL, J. - I agree.

Application dismissed.