

UPASENA
v.
RICHARD PATHIRANA,
MINISTER OF EDUCATION AND HIGHER EDUCATION
AND OTHERS

SUPREME COURT

ISMAIL, J.,

WIGNESWARAN, J. AND

J. A. N. DE SILVA, J.

SC (FR) APPLICATION NO. 50/99

MARCH 14, 2002

Fundamental Rights – Refusal of second extension of service – Whether a Cabinet decision prohibiting extension of services beyond 55 years has retroactive operation.

The possession of a postgraduate degree from a recognized University was a condition of eligibility for appointment to the post of President, Hapitigama College of Education. The petitioner did not possess that qualification. However, the Education Committee of the Public Service Commission appointed the petitioner to that post with effect from 01. 06. 1993 subject to the condition that he acquires such qualification within a period of three years. Consequently, the petitioner obtained the degree of Master of Education from the University of Colombo in 1994 and was confirmed in his post with effect from 01. 06. 1993. On reaching the 55th year on 17. 10. 1997 the optional age of retirement, he was granted his first extension of service for one year.

The petitioner's application for a second extension of service from 17. 10. 1998 to 16. 10. 1999, recommended by the Chief Commissioner of the College of Education (5th respondent) was submitted to the Secretary, Ministry of Education (2nd respondent). Although there was no reply to that letter, the petitioner continued to work till 31. 12. 1998 and was paid his salary. By letter dated 15. 12. 1998 the petitioner was informed that he could not be granted an extension beyond 56 years.

The defence urged on behalf of the respondents that by a Cabinet decision dated 03. 12. 1997 it was decided not to grant extension of services to persons who

had been appointed outside the approved scheme of recruitment and that the said decision applied to the petitioner as he did not possess a postgraduate degree from a recognized University and fifteen years' experience at the time of his appointment as President, Hapitigama College of Education.

Held:

- (1) The petitioner had complied with the direction given to him to acquire a postgraduate qualification. After confirmation in the post upon such compliance, he was given an extension of services. The Cabinet decision referred to should be applied prospectively and not retrospectively.
- (2) In the circumstances, the decision not to extend the petitioner's services beyond 56 years was unreasonable and arbitrary and violative of his rights under Article 12 (1) of the Constitution.

APPLICATION for relief for infringement of fundamental rights.

R. K. W. Goonasekara with *Upul Jayasooriya* for petitioner.

Saleem Marsoof, PC Additional Solicitor-General with *I. Demuni de Silva*, Senior State Counsel for respondents.

Cur. adv. vult.

May 31, 2002

J. A. N. DE SILVA, J.

The petitioner's complaint is in respect of the refusal to grant him his second extension of service as the President of the Hapitigama College of Education at Mirigama, a college established under the College of Education Act, No. 30 of 1986.

The petitioner who is a Commerce Graduate from the Vidyodaya University was appointed as a Graduate teacher at Deiyandara Maha Vidyalaya, Matara, with effect from 26. 07. 1970. Subsequently, he was promoted as an Acting Principal and a Teacher Trainee Instructor

attached to the Colombo South Education Office at Green Path. As evidenced by document P1c he obtained a Postgraduate Diploma in 10 Education from the University of Colombo in 1979.

In 1986, when Colleges of Education were established under the Colleges of Education Act, No. 30 of 1986, he was appointed as an Assistant Lecturer, Grade 1, at the Mirigama Hapitigama College of Education with effect from 01. 01. 1985 with the approval of the Cabinet of Ministers. Thereafter, the Education Service Committee of the Public Service Commission promoted him to the post of Dean of the said College with effect from 01. 11. 1986 (*vide P4b (1) and b (11)*) and as the Acting Vice-President on 01. 03. 1990.

In early 1993, the petitioner made an appeal to the former President 20 of Sri Lanka who was also the Minister of Education seeking confirmation in the said post. Although the said appeal had been forwarded to the Education Service Committee of the Public Service Commission with an endorsement by the President to confirm the petitioner along with two others similarly circumstanced, viz Mrs. V. Marimutthu, Acting Principal of Sripada College of Education and Mr. A. R. A. Aziz, Acting President of, Addalachchenai College of Education, the Education Service Committee by letter dated 22. 06. 1993 informed the Secretary to the Ministry of Education of its inability to do so as all three had not possessed the qualifications stipulated in the relevant Scheme of 30 Recruitment. In this backdrop the Minister of Education submitted a Cabinet Paper seeking approval to appoint Principals of Technical Colleges and Presidents of Colleges of Education who have completed at least one year of satisfactory service as at 01. 06. 1993 and this proposal was approved on 07. 07. 1993. Thereafter, by letter marked P4 (D) the Education Service Committee of the Public Service Commission appointed the petitioner to the post of President, Hapitigama College of Education with effect from 01. 06. 1993, subject to the condition that he should obtain a Postgraduate Degree from a rec-

ognized University within a period of three years. As evidenced by 40
document marked P1 (b) the petitioner had obtained the degree of
Master of Education from the University of Colombo in 1994 and was
confirmed in the said post with effect from 01. 06. 1993 (P11). When
the petitioner reached the fifty-fifth year on 17. 10. 1997, the optional
age of retirement from the public service, he applied for an extension
which was duly granted for one year in terms of the Establishments
Code. He submitted an application for the second extension of service
for the period 17. 10. 1998 to 16. 10. 1999 to the Secretary to the
Ministry of Education through the Chief Commissioner of the Board
(5th respondent) who recommended it. Although there was no reply 50
to that letter the petitioner continued to work till 31. 12. 1998 and
was paid his salary. By letter dated 15. 12. 1998 (P9) the petitioner
was informed that an extension could not be granted to him beyond
56 years.

Learned Counsel for the petitioner submitted that the refusal to
grant the 2nd extension was arbitrary and unreasonable and consti-
tutes a violation of the petitioner's fundamental rights guaranteed under
Article 12 (1) of the Constitution of the Democratic Socialist Republic
of Sri Lanka.

Mr. Marsoof, PC, Additional Solicitor-General who appeared for the 60
respondents submitted that the refusal of the second extension by
the Education Services Committee of the Public Service Commission
was justified in view of the Cabinet decision dated 25. 11. 1998 (4R.1)
which was based on an earlier Cabinet decision. Mr. Marsoof, PC
submitted that on or about 03. 12. 1997, the Cabinet of Ministers
decided that the services of persons who have been appointed to
any management or administrative post in the cadre of any Educational
Institute outside the approved scheme of recruitment should not be
extended beyond the age of 55 years. He drew the attention of Court
to the Cabinet Memorandum dated 28. 11. 1997 and the Cabinet 70

decision dated 03. 12. 1997 and also to the circular letter dated 22. 06. 1998 issued to the Secretary to the Ministry in terms of the said Cabinet decision. It was the contention of the respondents that at the time of the petitioner's appointment to the post of President of Hapitigama College of Education, the petitioner did not possess the requisite qualifications applicable to the post namely, a postgraduate degree from a recognized University and fifteen years experience. Therefore, the decision of the Cabinet not to allow such persons' extensions beyond 55 years applied to the petitioner.

It is observed that when the petitioner was appointed as the President of the Hapitigama College on a Cabinet decision he was given three years time to obtain a postgraduate qualification which he lacked at the time of the appointment. The petitioner obtained this requisite qualification within the stipulated period. The petitioner's first extension in service was duly granted by the Secretary of the Ministry of Education (P 6). It is also to be noted that the petitioner was made permanent in his post of President, Hapitigama College of Education by the Secretary to the Education Committee, after being satisfied that the petitioner was qualified to be made permanent (*vide* P 11). The petitioner's 2nd extension too had been recommended by the Chief Commissioner of the Colleges of Education Board, the 5th respondent in this case. With this second extension the petitioner's case slipped outside the purview of the Cabinet decision since the decision is to be interpreted as prospective and not retrospective.

In any event on the question of the requisite experience it is observed that the Education Department had not found anything wanting in his administration during the relevant period. In fact, the confirmation of the petitioner in the post was an indication that he was an able administrative officer.

It is also to be noted that the petitioner's case is different to that of Mrs. Marimuthu and Mr. Aziz who were also appointed as Presidents

of Education Colleges. There is nothing to establish that the abovementioned two were required to obtain the necessary educational qualification with their appointments. Even if their appointments were conditional it may be that they were not confirmed in their posts due to their failure to fulfil the conditions after the appointment.

In the circumstance of this case I hold that the decision not to extend the services of the petitioner beyond 56 years was unreasonable and arbitrary and constitutes a violation of the petitioner's fundamental right guaranteed under Article 12 (1) of the Constitution. ¹¹⁰ I, therefore, direct that he be paid a sum of Rs. 75,000 as compensation by the State. The petitioner is also entitled to a sum of Rs. 5,000 as cost of this application.

ISMAIL, J. – I agree.

WIGNESWARAN, J. – I agree.

Relief granted.