

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

S.C (FR) No. 138/2015

In the matter of an Application under  
Article 126 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka

D.P.L. Sunil Shantha Gunasekara  
“Ariya Niwasa”, Widya Chandra  
Mawatha, Digaradda, Ahangama.

**PETITIONER**

Vs.

1. S.S. Hettiarachchi  
Director General of Pensions,  
Department of Pensions,  
Maligawatte, Colombo 10.
2. Justice Sathya Hettige P.C.,  
Chairman
- 2A. Dharmasena Dissanayake,  
Chairman.
3. S.C. Mannapperuma, Member  
3A. A. Salam Abdul Waid, Member.
4. Ananda Seneviratne, Member  
4A. D. Shirantha Wijayatillake, Member
5. N.H. Pathirana, Member  
5A Prathap Ramanujam, Member
6. Kanthi Wijetunge, Member  
6A V. Jegarasasingam, Member

7. Sunil S. Sirisena, Member  
7A. Santi Nihal Seneviratne, Member

8. S. Thillanadarajah, Member  
8A. S. Ranugge, Member

9. A. Mohamed Nahiya, Member  
9A. D.L. Mendis, Member

10. I.M. Zoysa Gunasekara, Member  
10A. A Sarath Jayathilaka, Member

1<sup>st</sup> to 10<sup>th</sup> – All of Public Service Commission  
No. 177, Nawala Road, Narahenpita,  
Colombo 05.

11. T.M.L.C. Senaratne  
Secretary, Public Service Commission,  
No. 177, Nawala Road, Narahenpita,  
Colombo 05.

11A. H.M.G. Senevirathne  
Secretary, Public Service Commission  
No. 177, Nawala Road, Narahenpita,  
Colombo 05.

12. Upali Marasinghe  
Secretary, Ministry of Education,  
Palawatta, Battaramulla.

13. Jayatissa Block  
Provincial Director of  
Education-Southern Province.  
Provincial Education Office-  
Southern Province,  
Upper Dixon Road, Galle.

14. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

## **RESPONDENTS**

**BEFORE:** B.P. Aluwihare P.C., J.  
Anil Gooneratne J. &  
Vijith K. Malalgoda P.C., J.

**COUNSEL:** J.C. Weliamuna P.C with Pasindu Silva  
For the Petitioner  
  
Parinda Ranasinghe S.D.S.G for the Attorney General

**ARGUED ON:** 23.10.2107

**DECIDEDON:** 08.11.2017

**GOONERATNE J.**

The Petitioner in this application was the Principal of St. Aloysius College, Galle who retired from service on 12.09.2014 on reaching the age of retirement at the age of 60 years. He complains that his pension and other retiral benefits have been withheld by the authorities concerned. The averments in the petition indicates that the petitioner was formally informed that he has been retired under Section 12 of the Minutes on Pensions on 28.03.2015, i.e more than 6 months after the effective date of retirement. I also find that a charge sheet had been served on him about 1 year after the date of retirement. This court on 26.05.2015 granted leave to proceed under Article 12(1) of the Constitution. On the said day court inquired from the learned Deputy Solicitor

General as to why the Petitioner's commuted pension or a reduced pension has not been paid up to date? Consequently on 08.07.2015 learned Deputy Solicitor General informed court that 50% of the pension would be paid until the inquiry before court is concluded. I observe that in view of the intervention of court the Petitioner received at least 50/% of the pension.

On a perusal of the petition of the Petitioner it is evident that he joined the Public Service as a teacher on 01.02.1977. On 02.01.1995 he was appointed to class 1 of the Sri Lanka Principals Service and served as Principal in several schools and on or about 2004 appointed as Principal of St. Aloysius College, Galle (paragraphs 5 – 7 of petition). Altogether he has served the Public Service for about 37 years up to the date of his effective date of retirement. His achievements on behalf of St. Aloysius College are more fully described in paragraph 8 of the petition. The Petitioner allege that a series of malicious actions were done by the Secretary to the Old Boys' Association of St. Aloysius College which acts are referred to in P6, a complaint made to the Human Rights Commission by the Petitioner. The letter P6 indicates the manner in which he has been harassed by the said Secretary of the OBA who is also a local politician (namely Deshapriya). P6 provides full details as to how the Galle Police took the initiative to get his passport impounded and prevented the Petitioner leaving the island on a frivolous complaint. Petitioner was to leave for Japan with six

students from St. Aloysius College on a SAARC Educational Tour to Japan with other students from various schools and three other Principals. The Magistrate's Court proceedings contained in P3 of P6 indicates that police ultimately informed the magistrate that by an oversight Petitioner was to be arrested as a suspect. Magistrate ultimately made order revoking the order impounding the passport and accordingly informed the Controller of Immigration and Emigration. On perusal of P3 of P6 gives the impression that the above named Deshappriya was all out to harass the Petitioner and deprive the Petitioner of his legitimate dues. The Magistrate's Court proceedings were terminated.

The above seems to be the initial step taken by resorting to unscrupulous methods by the Secretary to the Old Boys' Association of St. Aloysius College to take some form of revenge from the Petitioner which ultimately resulted in depriving Petitioner's pensions' rights. Subsequent to the incidents reflected in P6 as described in paragraph 10 of the petition, Petitioner obtained a transfer to the Provincial Education Office, Galle and he served in that office from 16.05.2014 to 10.09.2014 (date of the retirement) P7(a) & P7(b).

It is pleaded that on or about February 2014, three investigating officers of the Education Ministry came to the college stating that the Ministry has received a complaint regarding admissions of Grade 1 students for the year 2013, and recorded statements from the two Vice Principals and the Principal of

the primary section of the school, other than the Petitioner. On 28.04.2014 Petitioner received a letter requesting for the amended appeal list of students admitted in the year 2013. He was also required to attend a preliminary inquiry (P8a to P8c) and a statement was recorded. In the petition it is pleaded that the following matters were told to the inquiring officers.

- (1) During his tenure of 10 years at St. Aloysius College no cases were filed against the school.
- (2) Complaint is as a result of Secretary of the school OBA taking revenge from him.
- (3) No parent raised any issue as regards admissions of school children for the year 2013.
- (4) Ministry of Education has approved to admit school children reaching a maximum of 45 per class, and 225 students were admitted (P9a and P6).

It is further pleaded that by letter of 26.04.2014 the 13<sup>th</sup> Respondent forwarded the Petitioner's application for retirement under normal retirement (P11). Then on 25.06.2014 Petitioner was informed that in view of the fact that a preliminary investigation is pending the above approval was amended to retire the Petitioner under Section 2:12 of the Pensions Minute (P12).

Petitioner also complain that since he retired from service on 11.09.2014 he had to continuously send letters requesting for retiral benefits by letters dated 15.08.2014, 13.10.2014, 12.11.2014, 19.12.2014 & 14.01.2015

(P13(a) to P13(d). He also complained to the Human Rights Commission. P15(a) & P15(b) , P16(b).

Letter P16 (b) addressed to the Human Rights Commission is a complaint by the Petitioner that the failure of officials to retire him under Section 12:1 of the Pensions Minutes prior to the date of retirement 11.09.2014.

I have also perused the affidavit of the 12<sup>th</sup> Respondent. Secretary to the Ministry of Education. It stated in the affidavit that a preliminary investigation was conducted in respect of acts of corruption and irregularities committed by the Petitioner during his tenure of office at St Aloysius College, Galle. It is affirmed by the 12<sup>th</sup> Respondent that it was recommended to issue a charge sheet. The investigation report dated 05.08.2014 (12R1) a draft charge sheet 12R2 and correspondence 12R 3 & 12R 4 are produced along with his affidavit. The preliminary investigation was centred around the following allegations of misconduct.

- (a) Acts of corruption and irregularities involving Grade 1 Student Admissions to the year 2013
- (b) Proceedings from stage play titled “Booruwa Mahattaya” being credited to Old Boys Association Bank Account instead of depositing the school Development Fund Account.
- (c) Producing bogus bills in respect of canteen renovations.
- (d) Mismanaging the School Co-operative Lending Society thereby driving it to bankruptcy,

- (e) Fraud committed in respect of moneys provided by Singer Sri Lanka for the development of the sport of rugby in the school.
- (f) Soliciting sexual gratifications.

It is averred inter alia in the affidavit of the 12<sup>th</sup> Respondent that the main allegation against the Petitioner was corruption and irregularities committed in respect of Grade 1 students admissions. It is specifically pleaded that the retirement of the Petitioner had been done in terms of Public Administration Circular 29/90.

At the stage of argument before us having heard the submissions of learned President's Counsel for the Petitioner, in reply to same the learned Deputy Solicitor General (senior) submitted to court that the case of *Wilbert Godawela Vs. S.D. Chandradasa and Others 1995 (2) SLR 338* has no application to this case and went on to submit that the said case is no longer authority to be followed. Having said that it was pointed out by learned President's Counsel that in the case in hand paragraph 27 of the affidavit of 12<sup>th</sup> Respondent specifically state that retirement of the Petitioner had been done in terms of Public Administration Circular 29/90. I do not agree with the submissions of learned Senior Deputy Solicitor General regarding the above point. It is evident that the formal charge sheet was issued to the Petitioner only after one year from the date of retirement of the Petitioner. Petitioner's retirement was earlier

approved to be a normal retirement but later converted to a Section 12 retirement under Clause 12 of the Minutes on Pensions after 6 months from the date of retirement. It is a highly unreasonable and an arbitrary decision of the authorities concerned and or the 1<sup>st</sup> to 13<sup>th</sup> Respondents to act in such a manner, and send a charge sheet by delaying the retiral benefit to a public servant who has served the state for 37 years, especially a teacher who later on became a Principal.

Circular No. 29/90 by the Public Administration was issued having considered the plight of a pensioner who has to go through lot of hardships by living on a meagre income. I have to mention at this point of this Judgement that Magistrate's Court proceedings were unnecessarily initiated against the Petitioner which ultimately ended up by a termination of the proceedings. The proceedings initiated on very frivolous grounds. The police in fact could not prefer a charge and admitted that fact before court, as stated above. This indicates that persons concerned were all out to take revenge from the Petitioner.

The allegations made by the Petitioner against one Deshapriya the Secretary of the OBA St. Aloysius College are well founded. On a perusal of the preliminary investigations report dated 05.08.2014 marked 12R1, the opening paragraph states that by letter dated 15.09.2013 by one Rupasinghe, President

OBA to Secretary, Ministry of Education and the letter addressed to His Excellency the President dated 10.11.2013 by the said Deshapriya, preliminary investigations were initiated, as in letter of 18.12.2013 by four persons named in 12R1.

I note that at Pg. 2 of 12R 1, it is stated that the said Rupasinghe the President of the OBA, St. Aloysius College who complained to Secretary, Ministry of Education never came before the Preliminary Investigation Committee to give evidence. The other person 'Deshapriya' who complained to H.E the President who agreed to submit written information to the committee. He failed to submit any written information. This indicates and this court could well draw adverse inferences against the two of them. The admission of students for the year 2013 was also considered by the committee. It is stated in 12R1 that Appeal and Objections papers relevant to the issue were misplaced. On the collection of Rs. 100,000/- for a play or concert, the parents could not be contacted or did not volunteer to give information. No monetary fraud established. Notwithstanding the several short comings stated in the preliminary investigations report 12R1, it has been recommended to issue a charge sheet which had been issued with much delay.

The importance of PA Circular No. 29/90 had been discussed in the *Godawella Case 1995 (2) SLR at Pg. 341*.

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 proposal..."

The preliminary report 12R1 is dated 05.08.2014 which is about 1 month prior to Petitioner's retirement. The charge sheet was issued (P22) on 29.09.2015. This is 1 year after Petitioner's retirement. The draft charge sheet had 8 charges. The charge sheet had only 5 counts. The charges on monetary claims seems to have been disregarded.

The counts which are five in number in the charge sheet relates to admissions of students for the year 2013. P24 is the award of pension dated 26.02.2016. All this I state it is highly prejudicial to the Petitioner's retirement. I agree with the Petitioner that the preliminary inquiry was conducted consequent to a malicious petition submitted by Deshapriya, the Secretary of

the OBA who made a false complaint to the police on 24.08.2015. This led to arbitrary police action to prevent the Petitioner visiting Japan on an official visit, who was to retire on 11.09.2014. Both the Secretary and S. Rupasinghe, the President of the OBA were responsible for falsely implicating the Petitioner. Ultimately the Magistrate terminated proceedings.

Documents 25(a) to 25(d) submitted by the Petitioner indicates that the Secretary to the Ministry of Education has approved the admissions of students to the school for the year 2013. Documents 12R6 is another approval by Secretary to the Ministry of Education. I also find that by letter P27(a), P27(b) the Provincial Director of Education has called from the Secretary, Ministry of Education for the disciplinary order and the charge sheet. This had not been sent. These letters are dated August 2015 and September 2015. It is only on receipt of same that the charge sheet was issued. Even by December 2015 there was no decision to hold a disciplinary inquiry against the petitioner. Letters P28 (a) & P28 (b) also refer to certain lapses of the authorities concerned in connection with the issuance of a charge sheet and its delay. In this regard, I note the contents of paragraph 13 of the petitioner's counter affidavit. It is very unfortunate that by P30 (a) dated 23.05.2016 a disciplinary inquiry was to be held. In reply to P30 (a). I have noted the contents of P30 (b) by the Petitioner. It inter alia refer to 3(i), (ii), (iii), (iv) & (v).

- (i) 37 වසරක සේවා කාලයෙන් පසු 2014. 09.12 වන දින මම විශ්‍රාම ගනිම
- (ii) මා විශ්‍රාම වැටුප් සංග්‍රහය 2-12 වගන්තිය යටතේ විශ්‍රාම ගන්නා අතරින් 2015. 02.23 දිනැති ලිපිය මගිනි. මෙම ලිපිය මා අතට පත් වූයේ 2015 මාර්තු මාසයේදී ය. එනම් විශ්‍රාම ගොස් මාස 6 ක් ඉක්ම වූ පසුවය.
- (iii) ශ්‍රේණිධානකරණය යෝජනාව පරිදි නීතිපති වරයා විසින් විශ්‍රාම වැටුපෙන් 50% ක් ගෙවීමට රජයට යෝජනා කරන ලදී. ඒ සඳහා ක්‍රියා මාර්ග ගැනීමේ දී විශ්‍රාම වැටුප් අධ්‍යක්ෂ වෙත 2015. 09.29 වන තෙක් චෝදනා පත්‍රයක් ලැබී නොමැති බවට දන්වා සිටි නිසා මට එරෙහිව චෝදනා පත්‍රයක් සකස් කර රාජ්‍ය සේවා කොමසම විසින් විශ්‍රාම වැටුප් අධ්‍යක්ෂ වෙත යැවීමට කටයුතු සලසා ඇත. එම චෝදනා පත්‍රය 2015. 09.29 දින මා වෙත ද එවා තිබිණි. ඒ වන විට මා විශ්‍රාම ගොස් වසරක් ඉක්මවා ඇත.
- (iv) මා විශ්‍රාම වැටුප් ව්‍යවස්ථා සංග්‍රහයේ 2-12 වගන්තියට යටත් කර ඇති බව මා වෙත දැන්වූයේ විශ්‍රාම ගොස් මාස 6 ක් ඉක්ම වූ පසුවය. මෙය ක්‍රම විරෝධී විශ්‍රාම ගැනීම බලරහිත කරන ලෙස ඉල්ලමින් මා විසින් ගරු ශ්‍රේණිධානකරණයේ නඩු අංක 138/2015 දරන නඩුව 2015 අප්‍රේල් මස ගොනු කරන ලදී. නඩුව ගොනු කර වසරක් ගතවී ඇතත් රාජ්‍ය සේවා කොමසම හෝ අධ්‍යාපන අමාත්‍යාංශයේ ලේකම් හෝ අනෙකුත් පාර්ශවයන් හෝ මේ දක්වා කිසිදු විරෝධතාවයක් ගොනු කර නොමැති බව සිහිපත් කර සිටිමි.
- (v) මෙම නඩුව 2016. 06.16 දින විභාගයට ගැනීමට නියමිතව ඇත.

In all the facts and circumstances of the case in hand, I hold that the entire process of holding a disciplinary inquiry against the Petitioner is tainted with

malice and unacceptable delays by the 1<sup>st</sup> to 13<sup>th</sup> Respondents and the authorities concerned. The procedure laid down in PA Circular 29/90 and provision contained in Section 12 of the Minutes on Pensions has not been correctly observed. A public servant who retired in September 2014 is called upon to face a disciplinary inquiry only in June 9<sup>th</sup> 2016 is ridiculous. This is nothing but an abuse of the process by the authorities concerned. It is nothing but a clear violation of Article 12(1) of the Constitution by the 1<sup>st</sup> to 13<sup>th</sup> Respondents. I observe that the persons responsible have in fact abused the available process.

It is no excuse to rely on Section 36:4 of Chapter XLVIII of the Establishment Code in the context of the case in hand. This provision contemplates to give the disciplinary authority to hold a formal disciplinary inquiry irrespective of the retirement of the officer. This does not give the authority concerned absolute power to hold an inquiry according to his whims and fancies. The administrative process has to be fair, reasonable, transparent and in today's context absence of malice. It appears to court that the process has been abused and it was utilised to deprive a public servant who worked for 37 years his due pension.

I grant relief as per sub paragraphs (b), (c) and (d) of the prayer to the petition of the Petitioner. I further direct the State to pay the Petitioner a sum of Rs. 500000/- as costs.

Application allowed as above.

JUDGE OF THE SUPREME COURT

B. P. Aluwihare P.C. J.

I agree.

JUDGE OF THE SUPREME COURT

Vijith K. Malalgoda P.C. J.

I agree.

JUDGE OF THE SUPREME COURT