

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

In the matter of an application under  
Article 12(1) and 126 and other  
Provisions of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.

SC (FR) No. 464/07

Abdul Razak Mohamed Hussain  
416/1, New Street, Weligama.

**Petitioner**

**Vs.**

1. M.M.N.D. Bandara,  
Secretary, Ministry of Education,  
Isurupaya, Battaramulla.
2. S. Thillainadarajah  
Additional Secretary,  
Education Service Branch,  
Ministry of Education,  
Isurupaya, Battaramulla.
3. S.L. Gunawardena  
Additional Secretary,  
Education Service Branch,  
Ministry of Education,  
Isurupaya, Battaramulla.
4. L.U.W. De Soysa  
Senior Assistant Secretary,  
Education Service Branch,  
Ministry of Education,  
Isurupaya, Battaramulla.
5. Padma Siriwardena  
Director General of Establishment,  
Ministry of Public Administration and  
Home Affairs,  
Independence Square,  
Colombo 07.

6. K.A. Thilakaratne  
Director General of Pensions  
Department of Pensions  
Maligawatte- Secretariat,  
Colombo 10.
7. H.D.L. Gunawardena  
Secretary, Public Service Commission,  
46, Vauxhall Street,  
Colombo 02.
8. M.A. Dharmadasa  
Director of Establishments  
Ministry of Public Administration and  
Home Affairs,  
Independence Square,  
Colombo 07.
9. Hon. Peter Mohan Maithree Peiris  
Attorney General  
Attorney General's Department,  
Colombo 12.

**Respondents.**

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**BEFORE** : Saleem Marsoof, PC., J.  
P.A. Ratnayake, PC., J. &  
S.I. Imam, J.

**COUNSEL** : R.R.S. Thangarajah with C. Ganesharajah and M.  
Khan for Petitioner.  
  
S. Barrie, SC. for Respondents.

**ARGUED ON** : 20-09-2010

**DECIDED ON** : 15-03-2011

## **P.A. Ratnayake, J**

The Petitioner in this case who was an officer of the Sri Lanka Educational Administrative Service retired from Service on 01.12.2004 upon reaching 60 years of age, which is the age of compulsory retirement in the public service. Meanwhile based on the budget proposals of 2005, the Ministry of Public Administration and Home Affairs issued Circular No. 09/2004 dated 27<sup>th</sup> December 2004 (P3). This Circular seeks to provide different benefits to pensioners -

- 1) who retired on or before 01-12-2004 (Clause 10.1); and
- 2) who retired *having served* on 01-12-2004 (Clause 10.2).

The relevant Governmental Authorities, ie Director of Pensions (6<sup>th</sup> Respondent) and Director of Establishments (8<sup>th</sup> Respondent), have taken up the position that the Petitioner is entitled to the benefits conferred on the first category mentioned above, ie a category of pensioners falling under Clause 10.1 of the Circular (P3), and accordingly he does not become entitled to benefits conferred on the second category falling under Clause 10.2 of the said Circular.

The Petitioner claims that he falls under the second Category (ie Clause 10.2) of the Circular, and is accordingly entitled to the benefits given to the pensioners under the said category. In his amended petition filled under Article 126 of the Constitution, he alleges that a violation of Article 12(1) of the Constitution has taken place. Court has granted leave to proceed on the alleged violation of Article 12 (1) of the Constitution.

Clause 10 of this Circular 09/2004 states as follows,  
“Pensions:

- 10.1 Those pensioners who have retired on or before 01-12-2004 should be paid a 15% increase on their unreduced pension (excluding allowances) with effect from 01-12-2004, subject to minimum Rs 750/= and maximum Rs 1,500/= per month. The 10% allowance being paid under Public Administrative Circular No 15/2000 of 27-09-2000 should now be calculated on the new unreduced pension and payments to be made with effect from 01-12-2004. The interim allowance of Rs 750/= per month paid in terms of the Public Administration Circular 24-2001 should continue to be paid. Director of Pensions will issue Circular instructions on this regard.
- 10.2 The full salary increase under this Circular should be applied for the purpose of computation of pensions of those officers who retire from service having served on 01-12-2004.”

Minutes on Pensions Clause 17 deals with compulsory retirement of Public officers and this provision states as follows,

“Every Public servant may be required to retire from the Public service on or after attaining the age of fifty five years. Retirement shall be compulsory for every Public servant other than a Judge of the Supreme Court on his attaining the age of 60 years unless the competent Authority decides that his services shall be retained.”

In terms of the above provision, the moment a public officer attains the age of 60 years, he is compulsorily retired.

The time of retirement based on the time of birth appears to have been used by the relevant Governmental Authorities earlier. This Court has not considered that method of calculation favourably. In *Prematilake Vs Withanachchi, Secretary, Judicial Services Commission and Others*, (1998) 3 SLR page 22 it is stated as follows.

“It is also clear that the Petitioner’s time of birth is totally irrelevant to the issue, inasmuch as, the time of birth is nowhere mentioned in the rule relating to retirement or the grant of pension. It appears from the submission of Mr. Sripavan that the 2<sup>nd</sup> Respondent has erroneously calculated the petitioner's date of retirement basing himself on the additional factor of the time of her birth. It seems to us that the rules pertaining to this matter deliberately avoid mentioning the time of birth for the obvious reason that this could lead to confusion and would end in untenable conclusions.”

The Petitioner’s date of birth is 1<sup>st</sup> December 1944. The Petitioner did not actually work on 1<sup>st</sup> December 2004, but worked only on 30th November 2004. In my opinion, this fact would not prejudice the rights of the Petitioner to claim 1<sup>st</sup> December 2004 as his date of retirement. The State has conceded this fact, but in any event in *Prematilake Vs Withanachchi* (supra) it is stated as follows,

“ The practice appears to be, to consider the last day on which the officer should have worked as the date of retirement; The unwritten concession being that an officer is exempted from working on what in fact is, his/her last day.”

Based on the above it would be necessary to interpret the provisions of Clause 10 of the Circular (P3) in respect of the claim made by the Petitioner.

Clause 10.1 specifically stipulates the manner in which pension revisions are to be made with respect to “**Pensioners who have retired on or before 01-12-2004.**”

Clause 10.2 states that the “**full salary increase under this Circular should be applied for the purpose of computation of pensions of those who retire from service having served on 01-12-2004.**”

The date of birth of the Petitioner is 1<sup>st</sup> December 1944. According to the Circular Clause 10.2 becomes applicable only to those officers who retired from service having served on 01-12-2004. This Clause speaks of a situation where the officer goes on retirement **after serving on 01-12-2004 or 02.12.2004 or thereafter.**

The Sinhala translation of the circular states as follows:-

**"2004-12-01 දින සේවයේ සිට ඉන් පසුව විශ්‍රාම යන නිලධාරීන්ගේ . . . . ."**

In my view, the distinction between Clause 10.1 and Clause 10.2 of the Circular P3 depends not only on the date of retirement from service, but also *the last date on which the Officer concerned actually worked.* Clause 10.1 applies to all those who retired on or before 01.12.2004, having not performed any work on 1.12.2004, whereas Clause 10.2 seeks to catch up those who retired on 02.12.2004 or thereafter having actually worked on 01.12.2004. Apparently, the Circular takes into consideration the opinion expressed by this Court in Prematilake's case that a retiring officer is not directed to perform any work on his optional date of retirement which is in the case the Petitioner's 60th birthday. The Petitioner admitted that he did not work on his 60th birthday, namely, on 01.12.2004.

Clause 10.1 of the Circular becomes applicable to pensioners **"who have retired on or before 01-12-2004."** Accordingly in respect of persons who retired on 01-12-2004 the applicable regime is given in Clause 10.1.

Bindra observes that "Where the words of the statute are clear enough, it is not for the Courts to "Travel beyond the permissible limits" under the doctrine of implementing legislative intension." (N.S. Bindra – Interpretation of statutes- 8<sup>th</sup> Edition Page 401)

Accordingly, it is clear that the Petitioner is entitled to claim benefits under Clause 10.1 of the Circular. He is not entitled to any benefits under Clause 10.2 of the Circular.

Before concluding this judgment, it would be necessary to distinguish this case from the case of *C.M.M. Prematilake Vs. Withanachchi* (supra). In Prematilake's case, the Petitioner's date of birth was 01st January 1937. She claimed her date of retirement to be 01st January 1997. In this case, the Petitioner's date of birth was 01st December 1944 and he claimed his date of retirement to be 1st December 2004. In Prematilake's case, the applicable Circular was P.A.Circular 2/1997 and in this case the applicable Circular was P.A. Circular 9/2004. Accordingly, the applicable Circulars and the wording of the Circulars were different.

P.A. Circular 2/97 applicable in Prematilake's case gave the claimed benefits to pensioners who retired on 01.01.1997. But Governmental Authorities took up the position that since the Petitioner worked only on 31.12.1996 and did not work on

01.01.1997 her date of retirement is 31.12.1996 and not 01.01.1997. Based on the above fact the Director General of Establishment by his letter produced marked P2A expressly states "I state that Petitioner's last working date is 31.12.1996 and she is not entitled to any allowance given to persons in service on 1st January 1997". But the Court holds that her date of retirement is not 31.12.1996, but 1.1.1997. It holds "that the Petitioner's pension should be computed on the salary drawn by her as at the date of her retirement viz 1.1.1997".

In this case also based on the above reasoning, Petitioner claims that he retired on 1.12.2004. In paragraph 1 of the amended petition it is pleaded, " and was in the SLEAS Class I from 1999-06-01 to the date of retirement on 2004-12-01 on his 60th year." In paragraph 14 of his amended petition it is pleaded "The Petitioner being a senior Officer in the Educational Administrative Service has been writing to the Authorities from the inception of his retirement date 1-12-2004 to the Authorities of the Education Ministry, Ministry of Public Administration, Pensions Department as well as to the Public Service Commission and even to His Excellency the President".

The Respondent do not deny that the date of retirement as claimed by the Petitioner is 01.12.2004. Even in the written submissions dated 11th January 2010 filed on behalf of the Respondents at the last paragraph of page 4 it is stated "the Petitioner's date of retirement is 01.12.2004."

But unlike in Prematilake's case (supra) where benefits were claimed under P.A. Circular No. 2/1997, the benefits claimed by the Petitioner in this case under P.A. Circular No. 9/2004 (benefits under Clause 10.2), are not given to pensioners who retired on 1.12.2004. Only the benefits stipulated under Clause 10.1 of P.A. Circular 9/2004 become payable to the pensioners who retired on 01-12-2004. Clause 10.1 expressly and unequivocally state the category of pensioners who fall under this Clause as follows:- "Those pensioners who have retired on or before 1.12.2004 should be paid .....". Therefore pensioners "who have retired on 1.12.2004" fall under this category. But benefits under Clause 10.2 which are the benefits claimed by the Petitioner become payable only to pensioners who worked on 1.12.2004 and retired thereafter. Accordingly, on the reasoning of Prematilake's case (supra) and also as claimed by the Petitioner himself in his pleadings he has retired on 01.12.2004 and all benefits to be given to pensioners who have retired on 1.12.2004 has been given to the Petitioner. He is not entitled to any benefits based on Clause 10.2 as those benefits are not to be given to pensioners who retired on 01.12.2004.

In the circumstances mentioned above the Governmental Authorities have correctly decided that the Petitioner is a pensioner who falls under Clause 10.1 of Circular 09/2004.

I hold that there is no violation of Article 12 (1) of the Constitution. The application of the Petitioner is dismissed. In all the circumstance of this case, there will be no costs.

**Judge of the Supreme Court**

**Saleem Marsoof, J.**

I agree

**Judge of the Supreme Court**

**Imam, J.**

I agree

**Judge of the Supreme Court**