

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

**S.C. Appeal No. 177/2016
SC/HCCA/LA 105/2016
WP/HCCA/COL 166/2013 (LA)
DC Colombo 35953/MS**

Subadhra Irene Mangalika Wijewickrama,
No. 61/41 A, Manel Avenue,
Old Kesbawa Road,
Delkanda,
Nugegoda.

Plaintiff

Vs.

D.S.B.S. Chandrawathi,
Kegalle Road, Alawathura.

Defendant

AND BETWEEN

D.S.B.S. Chandrawathi,
Kegalle Road, Alawathura.

Defendant-Appellant

Vs.

Subadhra Irene Mangalika Wijewickrama,
No. 61/41 A, Manel Avenue,
Old Kesbawa Road,
Delkanda,
Nugegoda.

Plaintiff-Respondent

AND BETWEEN

Subadhra Irene Mangalika Wijewickrama,
No. 61/41 A, Manel Avenue,
Old Kesbawa Road,
Delkanda,
Nugegoda.

Plaintiff-Respondent-Appellant

Vs.

D.S.B.S. Chandrawathi,
Kegalle Road, Alawathura.

Defendant-Appellant-Respondent

AND NOW BETWEEN

D.S.B.S. Chandrawathi,
Kegalle Road, Alawathura.

Defendant-Appellant-Respondent-Appellant

Vs.

Subadhra Irene Mangalika Wijewickrama,
No. 61/41 A, Manel Avenue,
Old Kesbawa Road,
Delkanda,
Nugegoda.

Plaintiff-Respondent-Appellant-Respondent

**Before: E.A.G.R. Amarasekara, J.
Janak De Silva, J.
Arjuna Obeyesekere, J.**

Counsel:

P.P. Gunasena for the Defendant-Appellant-Respondent-Appellant

Uchitha Wickremesinghe with Saumya Hettiarachchi for the Plaintiff-Respondent-Appellant-Respondent

Written Submissions tendered on:

25.05.2017 by the Defendant-Appellant-Respondent-Appellant

23.01.2018 by the Plaintiff-Respondent-Appellant-Respondent

Argued on: 22.10.2021

Decided on: 28.07.2022

Janak De Silva, J.

The Plaintiff-Respondent-Appellant-Respondent (hereinafter referred to as the “Respondent”) filed this action in the District Court of Colombo under Section 703 of the Civil Procedure Code to recover a sum of Rupees 1,050,000/- from the Defendant-Appellant-Respondent-Appellant (hereinafter referred to as the “Appellant”) who was at that time a public officer. Judgment and decree had been entered in favour of the Respondent and in order to satisfy the decree, the salary of the Appellant had been seized in terms of the Civil Procedure Code.

Sometime later, the Appellant had retired from public service and since the amount of the decree had not been recovered fully, the Respondent had taken steps to seize the pension of the Appellant and her commuted gratuity in order to satisfy the decree. The Appellant then made an application to the District Court of Colombo seeking to prevent the seizure of her pension on the basis that her pension is exempt from seizure in terms of section 218(g) of the Civil Procedure Code.

The Learned Additional District Judge by order dated 20.11.2013 allowed the application of the Appellant and her pension was declared free from seizure. In doing so the learned Judge held that the term ‘stipend’ in section 218(g) of the Civil Procedure Code means and refers to the entire pension and hence the entire pension of the Appellant is exempt from seizure.

Aggrieved by the said order, the Respondent appealed to the High Court of Civil Appeal of the Western Province holden in Colombo.

The High Court of Civil Appeal by order dated 27.01.2016 allowed the appeal and declared that the Respondent is entitled to seize the pension of the Appellant including her commuted gratuity. It was held that the pension of the Appellant is not exempt from seizure under section 218(g) as *“the term used in section 218(g) is ‘stipend’ and not ‘pension’ and therefore it should mean something additional and distinct from the pension.”* Further it was held that in Sri Lanka public servants have no absolute right to any pension or allowance and that Sri Lankan law does not recognize a public policy of the

State to protect the pension of a public officer from seizure in the execution of a decree. In conclusion, the High Court of Civil Appeal applied the maxim *Noscitur a sociis* and held that '*stipend*' is an additional or supplementary payment (although it could be a regular and fixed payment) and as the Appellant had not shown the existence of such a component in her emolument her pension can be seized.

This Court has granted leave to appeal on the following questions of law:

1. Has the High Court of Civil Appeal erred in Law in allowing the seizure of the Defendant's pension including her commuted gratuity?
2. If the entirety of the Petitioner's pension is exempted from seizure would the Petitioner be unjustly enriched at the expense of the Respondent?
3. If the answer to the aforesaid issue is in the affirmative ought the Petitioner's appeal be dismissed?

The main contention of the Appellant is that in terms of section 218(g) of the Civil Procedure Code, the pension of the Appellant cannot be seized during the execution of a decree. The learned counsel for the Appellant submitted that the term '*stipend*' used in section 218(g) of the Civil Procedure Code refers to the entirety of the pension and not to a portion of the pension drawn by a pensioner. He submitted that therefore, the entirety of the Appellant's pension cannot be seized under and in terms of section 218(g) of the Civil Procedure Code.

In response the learned counsel for the Respondent submitted that the term '*stipend*' used in section 218(g) does not refer to the entire pension. He submitted that it only refers to a component of the pension and that the terms *stipend, the cost-of-living allowance and the special living allowance*, refers to 'three components' of a pension. He submitted that through section 218(g) of the Civil Procedure Code, the legislature intended to exclude from seizure only the said 'three components' of a pension, and that the balance portion of the pension is liable to being seized to satisfy a money decree issued against a pensioner. The learned counsel for the Respondent further submitted that as the

Appellant had failed to provide a breakdown of her pension to prove that the above three components are included in her pension, the entirety of her pension is liable to be seized. The main issue for determination is the meaning to be given to the word '*stipend*' in section 218(g) of the Civil Procedure Code.

In this endeavour, it is important to examine the evolution of the wording in section 218(g) of the Civil Procedure Code since when the meaning of words or phrases used in a statute are unclear and has not been judicially interpreted, according to well established legal principles and principles of common sense, reference can be made to the historical evolution of the statute to understand its meaning. [Per Lord Coleridge, J. in ***Queen v. Most (1881) 7 QBD 244 at 251***]. Moreover, when interpreting legislation, it is a necessary requirement to always give effect to the intention of the legislature. Where there is ambiguity with regard to a meaning of a word or where a word is capable of having two meanings, reference can be made to the history of the statute to determine the intention of the legislature [*NS Bindra's Interpretation of Statutes*, 10th ed., page 945]

The Civil Procedure Code was enacted in 1889 as Ordinance No. 2 of 1889. Although there are several provisions which have been added to it later, section 218(g) was enacted in the English language. Article 23(1) of the Constitution states that all laws and subordinate legislation shall be enacted or made and published in Sinhala and Tamil, together with a translation thereof in English. The Second Proviso to Article 23 of the Constitution mandates that in respect of all other written laws the text in which such written laws were enacted or adopted or made, shall prevail in the event of any inconsistency between such texts. In ***The Attorney-General v. Herath Mudiyanseelage Hamyge Herath Banda [(1983) Bar Association Law Journal Reports Vol. I Part III 108]*** it was held that Bribery Act was enacted in English language and for the purposes of legal work it could not be considered in any other language.

As originally enacted Section 218(g) read as follows;

"Stipends allowed to naval, military and civil pensioners of Government and political pensions"

Subsequently the section was amended by Civil Procedure Code (Amendment) Acts No. 43 of 1949 and by No. 24 of 1961. Thereby the words '*the cost-of-living allowance*' and '*the special allowances*' were added respectively to the list of items that are excluded from liability of being seized during execution of a money decree.

Hence it is clear that as originally enacted, '*Stipends*' meant something different and distinctive to 'the cost-of-living allowance' and 'the special allowances and the High Court of Civil Appeal erred in applying the maxim *Noscitur a sociis* to section 218(g) of the Civil Procedure Code to ascertain the meaning of the word '*Stipend*'.

The important question is whether 'stipend' means the pension a public officer receives upon retirement.

The High Court of Civil Appeal went on the basis that section 218(g) of the Civil Procedure Code uses the word 'stipend' and not 'pension' and therefore it should mean something additional and distinct from the pension. However, it was not examined whether the words 'stipend' and 'pension' are synonyms. In fact, the High Court of Civil Appeal proceeded on the basis that they are not.

One of the basic rules in interpretation of statutes is to assume that words and phrases of legislature are used in their ordinary meaning. It is an equally well-established technique of statutory interpretation as held by Lord Coleridge in ***R v. Peters* [1886] 16 QBD 636**, for Courts of law to refer to dictionary in order to ascertain the ordinary relevant meaning of words.

Lord Coleridge held (at page 641)

"I am quite aware that dictionaries are not to be taken as authoritative exponents of the meanings of words used in Acts of Parliament, but it is a well-known rule of courts of law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books."

Dictionary usage is particularly important in textualist analysis, which seeks to find “a sort of ‘objectified’ intent—the intent that a reasonable person would gather from the text of the law” and places foremost priority on the text itself, as opposed to utilizing external sources of understanding. This method has its proclaimed roots in democratic principles: if the nebulous intent of the legislature controls over the plain meaning of its published text, how could citizens be on notice about the law which they are to follow? [**WAR OF THE WORDS: HOW COURTS CAN USE DICTIONARIES IN ACCORDANCE WITH TEXTUALIST PRINCIPLES**, Phillip A. Rubin, *Duke Law Journal* Vol 60, page 167 at 168]

The word ‘stipend’ has not been defined in the Civil Procedure Code and its exact meaning has not been judicially interpreted. In *Ibrahim Saibo et al. v. Philips* (39 N.L.R. 551) all what was held is that the word is inseparable from the notion of periodical payments and cannot therefore embrace a lump sum. The decisions in *Ambalavanar v. Kandappar* (31 N.L.R. 85) and *Goul v. Concecion* (36 N.L.R. 73) are of little assistance on this issue.

When any word is statutorily defined or judicially interpreted, there is no scope for looking at the dictionary meaning; however, in the absence of such definition or interpretation, the court may seek aid of dictionaries to ascertain the meaning of a word in common parlance [*N.S. Bindra’s Interpretation of Statutes*, 10th ed., (2007) Lexis Nexis Butterworths page 927].

Nevertheless, Court should not have recourse to any dictionary. If the court is concerned with the contemporary meaning of a word at the time the Act was passed, it should consult a dictionary of that period (*Hardwick Game Farm v. Suffolk Agricultural and Poultry Producers Association Ltd.* [1966] 1 WLR 287, 324; *R v. Bouch* [1982] 3 WLR 673, 677) [*Bennion on Statute Law*, 3rd ed., (1990) page 194].

The Civil Procedure Code was enacted in 1889. The dictionary closest in time to this period found after much effort is the “The Oxford English Dictionary” published in Oxford at the Clarendon Press in 1933, where the word ‘stipend’ is defined as a “a fixed periodical payment of any kind, e.g., a pension or allowance”.

Hence, I hold that the word ‘stipend’ as used originally in 1889 in section 218(g) of the Civil Procedure Code is synonymous with the words ‘pension’ or ‘allowance’.

There is no impact on this conclusion by the amendment made in 1949. Prior to it, the word used was “stipends”. By the Civil Procedure Code (Amendment) Act No. 43 of 1949, with the addition of the phrase “*the cost-of-living allowance*”, the word “stipends” was amended to read as “The stipend”. This remained unaltered by the Civil Procedure Code (Amendment) Act No. 24 of 1961 and the section now reads as “*the stipend, the cost-of-living allowance and the special living allowance of a naval, military, air force, civil or political pensioner of the Government;*”.

The fact that there are other allowances paid to a public servant upon retirement in addition to the pension is clear upon an examination of the Minutes on Pension which regulates the payment of pension to public officers. Section 2 of Ordinance No. 2 of 1947 makes the Minutes on Pensions part of the “written law “of Sri Lanka from 1901 and hence Court can take judicial notice of it although it was not produced in the lower court. Clause 2 refers to the award of a pension to specified public servants. Clause 8(1) specifies that the pension or gratuity awarded to a public servant shall be computed upon the salary drawn by him at the time of his retirement. Clause 12 (1) permits the withholding or reduction of certain sums from any pension, gratuity or other allowance payable to a public servant. Clause 15 refers to situations where a public officer is paid a pension, gratuity or other allowance. Clause 19 refers to the pension or retiring allowance.

‘The’ is the word used before nouns, with a specifying or particularizing effect as opposed to the indefinite or generalizing force of ‘a’ or ‘an’. It determines what a particular thing is meant, that is, what particular thing we are to assume to be meant. ‘The’ is always mentioned to denote a particular thing or a person [***N.S. Bindra’s Interpretation of Statutes, 10th ed., (2007) Lexis Nexis Butterworth, page 1724***].

Accordingly, the term ‘the stipend’ refers to a particular payment. This conclusion is supported by the Minutes on Pension which regulates the payment of pension to public officers. Clause 8(1) specifies that the pension or gratuity awarded to a public servant shall be computed upon the salary drawn by him at the time of his retirement.

I hold that the amendment of the word 'stipends' as 'The stipend' and the inclusion of the words 'the cost-of-living allowance' and 'the special allowances' reveals the intention of the legislature to distinctly identify the pension, 'the cost-of-living allowance' and 'the special allowances' from other allowances that are paid to government pensioners and clearly exempt the pension, 'the cost-of-living allowance' and 'the special allowances' from seizure.

This becomes clearer when one considers section 218(h) of the Civil Procedure Code. It originally exempted the salary of a public officer or servant from seizure. By the amendment made in 1949, even the cost-of-living allowance paid to a public officer was also excluded.

Moreover, the context in which public servants in Sri Lanka (Ceylon as it was then) were awarded a pension justifies the legislative intent of excluding the pension of a public servant from seizure in terms of section 218(g) of the Civil Procedure Code.

P.D. Kannangara in *"The History of the Ceylon Civil Service 1802-1833, A Study of Administrative Change in Ceylon"* [Tisara Prakasakayo, 1966, page 169] explains the historical reasons as follows:

"At the time of the formation of the Civil Service, the gift of the Colonial Office to what it considered inadequate salaries was a favourable retirement and pension scheme. Dundas, who originated the idea, specifically stated that considering the small scale on which it was proposed to regulate the salaries of Civil Servants, some arrangement ought to be made with a view to making a provision for their retreat. He also thought that to induce Civil Servants to look forward to a 'certain and competent independence' after a given number of years of service, was the best security against abuse. Pensions were to be proportionate to the duration and importance of the services rendered."

This rationale for the grant of a pension to a public servant may well have been the reason for Moseley J. to concede in *Ibrahim Saibo et al. v. Philips (Supra. page 552)* that the object of paragraph 218(g) of the Civil Procedure Code is to protect pensions payable to Government officers. Indeed, that intention is clear upon a reading of the paragraph. Government servants are not compensated at the same level as in the private sector. One of the main incentives to join the public service is the pension a public servant receives upon retirement. The object behind the exemption of the pension from seizure is that a public servant pensioner should not be left high and dry and should have some financial means to carry on in old age when the need of the pensioners is greatest.

The learned counsel for the Respondent submitted that the Appellant will be unjustly enriched if her pension is exempted from seizure. However, as held in *Ibrahim Saibo et al. v. Philips (Supra.)*, the commuted gratuity payable to the Appellant is liable for seizure towards satisfaction of the money decree the Respondent has obtained against the Appellant. It is observed that there is no evidence on record to show that there are no other assets of the Respondent which can be seized. In any event, where the legislature has specified that certain amounts are exempt from seizure, the question of unjust enrichment does not arise.

For all the foregoing reasons, I hold that the pension of the Appellant cannot be seized under section 218(g) of the Civil Procedure Code for the purpose of satisfying the money decree. However, her commuted gratuity is liable to be seized for the satisfaction of the money decree obtained by the Respondent.

Accordingly, I answer the questions of law as follows:

1. Has the High Court of Civil Appeal erred in Law in allowing the seizure of the Defendant's pension including her commuted gratuity?

The High Court of Civil Appeal erred in law in allowing the seizure of the Defendant's pension. Her Commuted Gratuity is liable for seizure.

2. If the entirety of the Petitioner's pension is exempted from seizure would the Petitioner be unjustly enriched at the expense of the Respondent?

No.

3. If the answer to the aforesaid issue is in the affirmative ought the Petitioner's appeal be dismissed?

Does not arise.

Accordingly, I set aside the order of the High Court of Civil Appeal of the Western Province holden in Colombo dated 27.01.2016 and affirm the order of the learned Additional District Judge of Colombo dated 20.11.2013.

Parties shall bear their costs.

Appeal partly allowed.

Judge of the Supreme Court

E.A.G.R. Amarasekara, J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court