

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

In the matter of an Application for a writ of certiorari under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka to quash an Award dated 08.04.2009 made by the Industrial Court of Colombo and for a Writ of Madamus to compel the People's Bank to act under the provisions of the Constitution relating to the Provident Fund and Pension Scheme.

C.A. Application No: 579/2009

W.M.A. Perera,
31, Kandawala Road,
Battaramulla.

Employee-Applicant-Petitioner.

Vs.

1. People's Bank,
Head Office,
No.75, Sir Chittampalam A
Gardiner Mawatha,
Colombo 02.
2. K.A.D.B Karimarathne,
216/8, Pamunuwa Road,
Maharagama.

Respondents

BEFORE : S.SRISKANDARAJAH,J.(P/CA)

COUNSEL : D.M.G.Dissanayake for the Petitioner

Ms. Manoli Jinadasa for the 1st Respondent.

Written Submissions : 20.08.2010 (Petitioner)
23.08.2010 (Respondent)

Decided on : 05.10.2011

S.Sriskandarajah,J(P/CA)

The Petitioner was employed with the 1st Respondent bank since 02.04.1959 and was dismissed from service with effect from 08.08.1986. The Petitioner challenged the said order of dismissal in the Labour Tribunal of Colombo. The Labour Tribunal after inquiry ordered that the termination of the service of the Petitioner is justified. The Petitioner challenged this order before the High Court of the Western Province. The High Court in its judgment dated 13.02.1998 decided that the termination of the services of the Petitioner is unjustified and awarded compensation in a sum of Rs. 474,941.60 in lieu of reinstatement.

The Petitioner thereafter made a request to the 1st Respondent that his monthly pension with arrears be paid. The 1st Respondent informed the Petitioner that his request cannot be granted. This dispute was referred by the Minister under Section 4(1) of the Industrial Disputes Act for arbitration and appointed the 2nd Respondent as the arbitrator. The dispute referred for arbitration is as follows:

“Whether the deprivation of pension rights by the Peoples’ Bank to Mr. W.M.A.Perera owing to the dismissal of him from service with effect from 08.08.1986, where he had been completed over twenty eight years service in the said bank and while remaining two more years for his pension entitlement is justified and if not, to what relief he is entitled”.

After an inquiry the learned arbitrator by his award dated 08.04.2009 held that the Petitioner is not entitled for his pension. The Petitioner in this application has sought a writ of certiorari to quash the said award on the basis that the 2nd Respondent has misunderstood or misinterpreted the evidence placed before him specifically the provisions of the constitution in relation to the Pensions Scheme of the 1st Respondent Bank.

The 1st Respondent’s Pension Scheme has laid down rules for the entitlement to the said scheme. Rule 1.1 of the Pension Rules provides that the employee who are qualified for the pension are those who have reached the age of retirement of 55 years and possess over 10 years of service in the 1st Respondent Bank. This Rule was considered and interpreted in the case of People’s Bank v Gilbert Weerasinghe (2008) BLR Vol. XIV at page 133 where the Supreme Court held:

“It must be noted that the Pension rights are not automatically accrued to an employee. There are specific criteria to be fulfilled for an employee to qualify for a pension. According to the Peoples’ Bank Pension Scheme,

pension is granted only if an employee is in service and at the age of 55 years. Pension will not be granted to an employee who is under the age of 55 years except on the recommendation of a Medical Board and approved by the General Manager. Employees who leave the Bank before reaching the age of 55 and who are dismissed from service are not entitled to pension under the pension rules that exist in the Bank”.

Even though the High Court held that the termination of the services of the Petitioner is unjustified it has not considered re instatement with back wages until the age of retirement and pension benefits thereafter. Instead it has awarded compensation in a sum of Rs.474,941.60. The Petitioner challenged this order in the Supreme Court only to enhance the compensation but he has settled the case without seeking any other relief from the Supreme Court.

In the given circumstances the Petitioner had not satisfied the requirements of the Pension Rules for him to be entitled for Pension as he was not in service when he reached the age of 55 years. Therefore the arbitrators finding that the Petitioner is not entitled for his pension cannot be interfered with by this Court. The application of the Petitioner is dismissed without costs.

PRESIDENT OF THE COURT OF APPEAL

KLP/-