

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

In the matter of an application for a mandate in the nature of a Writ of Certiorari in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

D. G. L. Jayanthi
Ambagahawatte, Yagirala.

Petitioner

Case No: C.A. (Writ) 84/2014

Vs.

1. Pradeshiya Sanwardhena Bank (also known as Regional Development Bank)
No. 933, Kandy Road, Wedamulla, Kelaniya.
2. Keshala Jayawardhena
Chairperson,
Pradeshiya Sanwardhena Bank,
No. 933, Kandy Road, Wedamulla, Kelaniya.
3. Sarath De Alwis
Director
4. A. V. K. Madhavi Herath
Director
5. Dr. B. M. S. Batagoda
Director
6. Dammika Perera
Director
7. J. M. S. D. Ratnayaka
Director
8. C. K. Nanayakkara
Director
9. T. A. Ariyapala
Director

10. Russel De Mel
Director

11. R. Siriwardhena
General Manager / Chief Executive Officer

All of Pradeshiya Sanwardhena Bank, No. 933,
Kandy Road, Wedamulla, Kelaniya.

Respondents

Before: Janak De Silva J.

N. Bandula Karunaratne J.

Counsel:

Chathura Galhena with Manoja Gunawardena for the Petitioner

Manohara Jayasinghe SSC for the Respondents

Argued On: 16.09.2019

Written Submissions filed on:

Petitioner on 12.10.2018 and 31.10.2019

Respondents on 25.10.2018

Decided on: 24.07.2020

Janak De Silva J.

The Petitioner is seeking a writ of certiorari quashing the entire proceedings of the disciplinary inquiry (P15) conducted against the Petitioner by the 12th Respondent on the direction of the 11th Respondent based on the Disciplinary Code. The Petitioner claims that this Disciplinary Code was not in force as it was not made in accordance with the provisions of section 39 of the Pradeshiya Sanwardana Bank Act No. 41 of 2008 as amended (Act).

The Petitioner was working as the 2nd Officer of Walagedara branch of the 1st Respondent Bank. She contends that there were some financial irregularities at the said branch and she informed about these irregularities to the Chief Internal Auditor of the 1st Respondent Bank. She further states that due to the said act, the Manager and several other officers of Walagedara branch made false complaints against her to the higher authorities of the 1st Respondent Bank.

As a result, the Petitioner was transferred to Matugama branch. Initially, an internal inquiry was conducted and statements were recorded from the Petitioner. By letter dated 04.03.2013 (P9), her services were suspended without salary in terms of Part 16 of the Disciplinary Code of the 1st Respondent Bank.

Charge sheet dated 03.05.2013 (P11) was issued against the Petitioner by the 1st Respondent Bank. The Petitioner took up a preliminary objection regarding the maintainability of the said charge sheet on the basis that it was contrary to the provisions of section 39 of the Act.

The 12th Respondent conducted the disciplinary inquiry and found Petitioner guilty of all charges. The disciplinary order was communicated to the Petitioner by 'P16'. The Petitioner was reinstated in service subject to several punishments including withholding of promotions for 5 years and withholding of salary increments for 2 years.

The Petitioner seeks to impugn 'P15' and 'P16' on the ground that the disciplinary inquiry was conducted in terms of the Disciplinary Code of the 1st Respondent Bank, which is not made in conformity with section 39 of the Act and therefore is illegal, contrary to law and has no force or avail before law.

Article 1.5 of the Disciplinary Code of the 1st Respondent Bank reads –

"2008 අංක 41 දරණ ප්‍රාදේශීය සංවර්ධන බැංකු පනතේ 09 වැනි වගන්තිය ප්‍රකාර ප්‍රාදේශීය සංවර්ධන බැංකුවේ අධ්‍යක්ෂ මණ්ඩලය විසින් අනුමත කර, එම පනතේ 28 වැනි වගන්තිය ප්‍රකාර ව සාමාන්‍යාධිකාරීවරයා විසින් නිකුත් කරන ලද, එම බැංකුවේ සමස්ත සේවක මණ්ඩලයට බලපාන සහ එම සේවක මණ්ඩලය බැඳී සිටින අභ්‍යන්තර විනය නීති සංග්‍රහය මෙමගින් හඳුන්වා දෙනු ලැබේ."

Accordingly, it is clear that the Disciplinary Code of the 1st Respondent Bank was not made in terms of section 39 of the Act as contended by the Petitioner but was issued by the General Manager in terms of section 28 of the Act and approved by the Board of Directors in terms of section 9 of the Act.

Section 28 of the Act reads –

"(1) The General Manager shall issue guidelines in respect of age of retirement, disciplinary control and any other matter as may be necessary for the proper administration of the affairs of the Bank.

(2) The employees of the Bank shall comply with such directions."

It is clear from by the wording of section 28 of the Act, that the power to issue guidelines in respect of disciplinary control of the employees of the 1st Respondent Bank is a matter for the General Manager.

Section 39 of the Act reads –

“(1) The Board may make rules in respect of all or any matter for which rules are required or authorized to be made under this Act or any other matter necessary to enable the Bank to effectively carry out and perform its powers and. duties under this Act.

(2) Every rule made by the Board shall be published in the gazette and shall come into operation on the date of the publication or on such later date as may be specified in the rules.”

In terms of sub-section (1), the Board can make rules in two situations. Firstly, where it is required or authorized to be made by the Act. Secondly, where it is necessary to enable the Bank to effectively carry out and perform its powers and. duties under this Act. However, neither of these situations are engaged in this case since section 28 of the Act specifically provides for the making of guidelines in respect of disciplinary control.

The Petitioner contended that the Disciplinary Code does not come within the scope of “guidelines” but within the ambit of “rules” since it controls the employment conditions such as disciplinary proceedings, suspension of service, issuing of charge sheets and punishments to be imposed.

Black’s Law Dictionary, 9th Ed. at 1446 defines “rule” as follows –

“Generally, an established and authoritative standard or principle; a general norm mandating or guiding conduct or action in a given type of situation.”

Oxford Advanced Learner’s Dictionary, 7th Ed. at 690 defines “guidelines” as follows –

“A set of rules or instructions that are given by an official organization telling you how to do something, especially something difficult.”

Since “guidelines” can be defined as “a set of rules”, I hold that the use of the word “rules” in section 39 of the Act and the use of the word “guidelines” in section 28 of the Act is not decisive in determining the validity of the Disciplinary Code of the 1st Respondent Bank.

It is trite law that for the purposes of interpretation of two provisions in apparent conflict, the general provisions must yield to the special ones [*Seward v. The Vera Cruz* (1884) 10 AC 59, *Naresh Chandra Das and Another. v. Emperor* AIR (1942) Cal 593, *Rajiyah and Another v. Aboobakker and Others* (1978-1979) 2 Sri.L.R. 131, *Ghouse v. Ghouse* (1988) 1 Sri.L.R. 25, *Calistus Perera v. Nawange* (1994) 3 Sri.L.R. 305, *Paul Coir (Private) Ltd v. Waas* (2002) 1 Sri.L.R. 13]. This principle is expressed by the Latin maxim *generalia specialibus non derogant*.

To explain this rule, it would be apt to quote the following passage from *Craies on a Statute Law*, 5th Ed. at page 205 –

“The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply.”

In view of the above, I hold that section 28 of the Act overrules section 39 of the Act when it comes to the disciplinary control of the employees of the 1st Respondent Bank. As section 28 of the Act does not require the guidelines issued by the General Manager with regard to the disciplinary control to be published in the gazette to come in to force, I hold that the said Disciplinary Code is in force for all purposes in connection with or arising out of the disciplinary control of the employees of the 1st Respondent Bank.

For all the foregoing reasons, I dismiss this application without costs.

Judge of the Court of Appeal

N. Bandula Karunaratne J.

I agree.

Judge of the Court of Appeal