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

K.P.S.D. De Silva,
No.13/1, Station Road,
Dehiwela.
Petitioner

CASE NO: CA/WRIT/380/2016

Vs.

1B. L.H.S.C. Silva,
Commander of the Sri Lanka Army,
Sri Lanka Army Headquarters,
P.O. Box 553,
Colombo 3.

2C. G.D.H. Kamal Gunaratne,
Secretary, Ministry of Defence,
No. 15/5, Baladaksha Mawatha,
Colombo 3.

3A. Siripala Hettiarachchi,
Secretary, Ministry of Public Administration and Management,
Independence Square,
Colombo 7.
Respondents

Before:	Mahinda Samayawardhena, J.
Counsel:	Boopathi Kahathuduwa for the Petitioner. Maithree Amarasinghe, S.C., for the Respondents.
Argued on:	19.02.2020
Decided on:	19.05.2020

Mahinda Samayawardhena, J.

The Petitioner who was in the rank of (Acting) Major in the Sri Lanka Army became totally blind, according to the findings of the Army Medical Board marked P6, "*Due to antimalarial tablets taken as a treatment or prophylaxis when deployed in North and East.*" This was categorised as a permanent disability compelling him to retire from the Army.

The Petitioner claimed compensation in terms of Public Administration Circular No.22/93 (iv) dated 29.12.2008 marked P9, the applicability of which was extended to members of the Armed Forces by P10. The P9 Circular would apply *inter alia* if the injury is caused by an accident whilst on duty. There is no issue that the injury was caused whilst the Petitioner was on duty in operational areas. The 1st Respondent Commander of the Army, as seen from P12-P14, refused compensation on the basis that the Petitioner's blindness did not occur due to an accident.

Black's Law Dictionary (8th edition) defines the word "accident" as "*An unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events or that could not be reasonably anticipated...An unforeseen and injurious occurrence not attributable to mistake, negligence, neglect or misconduct.*"

The Philippine Law Dictionary (3rd edition) defines the term as "*that which happens by chance or fortuitously, without intention and design, and which is unexpected, unusual and unforeseen*".[1]

The Oxford Advanced Learner's Dictionary (9th edition) defines "accident" as *inter alia* "*something that happens unexpectedly and is not planned in advance*".

At the argument, learned State Counsel generously accepted that the word "accident" can encapsulate both an instantaneous occurrence and a prolonged process. A motor traffic accident falls into the former category whereas the case of the Petitioner falls into the latter.

It is clear that the interpretation given to the word "accident" appearing in the Circular marked P9 by the Commander of the Army is inaccurate and the decision not to make payment of compensation on P9 based on that interpretation is therefore incorrect.

At the argument, learned State Counsel candidly admitted that the Petitioner's injury falls within the definition of "accident". Had this admission been made on the notice returnable date,

[1] https://lawphil.net/judjuris/juri2010/sep2010/gr_183054_2010.html

the relief sought by the Petitioner regarding compensation could have been granted.

The Petitioner has continued to fight for his rights, as he did on the battlefield for the greater good of the motherland. It appears, as a result, a new Court of Inquiry was convened to look into the Petitioner's grievance after the institution of the action—vide X1-X3 tendered with the counter affidavit. Thereafter, as seen from X4 dated 14.08.2018 and X5 dated 18.10.2018, the Commander of the Army and the new Medical Board, respectively, recommended that compensation be paid to the Petitioner in terms of Circular No.22/93 (iv) dated 29.12.2008 marked P9.

According to this new development, the reliefs prayed for in paragraphs (b) and (c) of the prayer to the petition have become superfluous. Learned Counsel for the Petitioner informed the Court at the argument that he also does not pursue the reliefs prayed for in paragraphs (d), (f) and (g) of the prayer to the petition.

The only relief which the Petitioner now seeks is paragraph (e) of the prayer to the petition, which is payment of compensation in terms of Circular No.22/93 (iv) dated 29.12.2008 marked P9, extended by P10.

In view of recent developments, as reflected in the documents marked X1-X5, this relief can be granted.

However, learned State Counsel for the Respondents has a qualm. State Counsel says that due to the Cabinet decision

dated 28.03.2018 marked R5 and the follow-up Circular of the Ministry of Defence dated 05.04.2018, whereby a new scheme was introduced to pay compensation to members of the Armed Forces, Circular No.22/93 (iv) dated 29.12.2008 marked P9 cannot be made use of to pay compensation to the Petitioner.

The new Circular dated 05.04.2018 is not part of the record, but learned State Counsel tendered a copy in open Court. This Circular seems not to be as favourable to the Petitioner as the old Circular marked P9.

Learned State Counsel admits that the old Circular has not been annulled by the new Circular. Both Circulars are in operation in parallel. But Counsel's point is that when a new Circular is issued in order to deal with a particular category of members of the Armed Forces, into which, according to Counsel, the Petitioner falls, it is not permissible for the Petitioner to rely on the old Circular. This argument is unsustainable.

In the first place, the new Circular has no retrospective effect. Nor has it cancelled the old Circular. Therefore, the authorities had the option of selecting the most relevant and applicable Circular in deciding the Petitioner's application. When the Commander of the Army and the new Medical Board by X4 and X5 decided that the Petitioner comes within the old Circular marked P9, they were aware of the existence of both Circulars but took a considered decision to grant relief to the Petitioner in terms of the old Circular. The decision reflected in X4 and X5 is not challenged in these proceedings or in any other.

When a statute can be interpreted in favour of either the subject or the State, the tendency is to interpret it in favour of the former, for it is the fundamental obligation of the State to protect the interests of citizens, for the benefit of whom alone it exists. There is a presumption that the legislature does not intend what is unreasonable and unjustifiable.

Bindra's Interpretation of Statutes (12th Edition) at page 225 states *"Where an equivocal word or ambiguous sentence leaves a reasonable doubt as regards its meaning, the benefit of doubt must be given to the subject and against the legislature which failed to explain itself."*

Wade in his monumental work *Administrative Law* (11th Edition) at 735-736, whilst discussing the legal form and characteristics of Circulars, states that although Circulars have no inherent legal effect, "*they may be used as a vehicle for conveying instructions to which some statute gives legal force…They may also contain legal advice of which the courts will take notice.*"

Our Courts have recognised that Circulars are amenable to writ jurisdiction. *Vide The Surveyors' Institute of Sri Lanka v. The Surveyor General [1994] 2 Sri LR 319*; *Pathirana v. Victor Perera [2006] 2 Sri LR 281*.

Hence, one may argue that the principles of interpreting subordinate legislation are applicable in giving effect to Circulars. In this regard, Bindra in the said treatise at page 100 states "*The courts should take a cautious approach in construing the subordinate legislation and adopt almost the same standard as adhered to in interpreting legislative enactments.*"

It is well settled law that the rights of parties shall be decided at the date of the institution of the action. (*Talagune v. De Livera [1997] 1 Sri LR 253* at 255; *Kalamazoo Industries Ltd v. Minister of Labour and Vocational Training [1998] 1 Sri LR 235* at 248; *Lalwani v. Indian Overseas Bank [1998] 3 Sri LR 197* at 198; *Abayadeera v. Dr. Stanley Wijesundara, Vice Chancellor, University of Colombo [1983] 2 Sri LR 267* at 280; *Kalamazoo Industries Ltd v. Minister of Labour & Vocational Training [1998] 1 Sri LR 235* at 248)

Learned Counsel for the Petitioner drew the attention of the Court to Bindra at page 508 where the learned author states "*When the law is altered during the pendency of an action, the rights of the parties are decided according to law, as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights*".

Bindra also states at page 510:

> *A statute will not affect rights which had accrued before a statute came into force unless there are express words in the statute affecting such rights or where a retrospective effect to the statute is inevitable by necessary intendment or implication. Statutes should be interpreted, if possible, so as to respect vested rights. It is not to be presumed that interference with existing rights is intended by the legislature, and if a statute be ambiguous the court should lean to the interpretation which would support existing rights.*

Maxwell on the Interpretation of Statutes (12th edition) at 220-221 echoes the above sentiments, citing the United Kingdom case of *National Real Estate and Finance Co., Ltd v. Hassan [1939] 2 KB 61*, where the Court of Appeal held that a landlord who had filed an action by way of writ prior to the enactment of legislation applicable to the said action, was allowed to proceed with the action in terms of the law at the time of filing the application.

Learned Counsel for the Petitioner also invited the Court to look at the issue from another perspective. He referred to the following observations made by S.N. Silva J. (later C.J.) in *Ibrahim Rahumathuma v. Peoples Bank [1993] 2 Sri LR 387* at 399:

> *The 3rd Respondent made her application to the Bank on 10-07-1979, nearly five years before the amendment of 1984 had come into force. This delay, enabled the Petitioner to raise the objection of time bar. If the application had been processed expeditiously, a decision to acquire may have been made prior to the amendment coming into force. In these circumstances, it would surely be an injustice, to strike down the application of the 3rd Respondent on the basis of a new factor in the form of an amendment, which came into force during the period of delay, for which the 3rd Respondent was not responsible. On the other hand, if there was another applicant, who was similarly circumstanced as the 3rd Respondent but whose application was expeditiously processed and a decision made to acquire prior to the amendment; would not such an applicant have an undue advantage over the 3rd*

> *Respondent? In my view law should be interpreted so that its application will avoid such injustice and discriminatory treatment amongst persons, similarly circumstanced. These matters too, weigh against the interpretation contended for by learned President's Counsel for the Petitioner.*

I am in total agreement with these observations. In the instant case, the Petitioner filed this application on 04.11.2016 and the new Circular was issued nearly one and a half years later, i.e. on 05.04.2018. If the application of the Petitioner had been processed expeditiously, he would have been entitled to the relief sought without contest from the State.

For the aforesaid reasons, I grant the relief prayed for in paragraph (e) of the prayer to the petition and allow the application of the Petitioner but without costs.

Judge of the Court of Appeal