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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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My No. }

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Your No. }

දිනය } 19 - 04 - 2021
திகதி }
Date }

Mr. R. Karunanithy
Thambasiddy Road
Thambasiddy
Point Pedro.

Complainant/s

HRCSL Application Case No: HRC/3398/07

Vs.

Registrar General
Registrar General's Office
Battaramulla.

Respondent/s

The Complaint

The complainant states that he had been unreasonably lost his promotions, salary increments due to false allegations directed at him. He was charged with the allegation of leave without prior approval and he claims that he has all evidence to prove his innocence. He requests the commission to get his promotions and salary increments. (G.C.S. II, PMAS II, PMAS I).

Respondent's reply

The Respondent claims that the complainant had a habit of taking leave without prior approval. So they calculated the leaves without medical certificates as No-Pay leaves.

Observations

A. Relevant law and applicability to the situation

Allegations in the complainant's brief above are founded on the contention that equal protection of law was denied to the complainant and that the alleged executive or administrative action was unreasonable and arbitrary. Therefore, relevant constitutional provision is Article 12(1).

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14, R. A. De Mel Mawatha, Colombo - 04.

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Establishment Code Chapter V, 7.1, 7.2

Establishment Code Chapter XII, 1.1, 1.2, 1.3. 1.7, 6

Establishment Code Chapter VII, 10.1, 10.7, 10.9

Public Service Commission Procedural Rules Chapter XVII, 184-186

B. Observations on the submissions based on evidence and relevant law.

- As observed in the Establishment Code, Chapter VII, 10.1 says that the salary increment is not a right to an employee and he must earn his promotion by a satisfactory service. Further the Establishment Code. Chapter XII, I.I also says leave is not a right to an employee. The employee needs to get prior approval for his leave.
- According to the Public Service Commission Procedural Rules.

186. A Public Officer must earn his promotion by **a satisfactory service and fulfillment of all the required qualifications prescribed** in the Service Minute or the Scheme of Recruitment.

- (i) Satisfactory service means a period of service, during **which period an officer had earned all annual salary increments fell due by efficient and diligent discharge of duties**, by passing over efficiency bars fell due, by qualifying for confirmation in service fell due and during which period he has not committed a punishable offence.
- (ii) Where an officer has not been granted his due annual salary increments for legitimate reason the period during which the increment had stand suspended, reduced, stopped or deferred and where an officer had committed a punishable offence falling under Schedule I of offences, a period of three years from the date of commitment of the offences and where an officer had committed a punishable offence falling under the Schedule II of offences a period of one year from the date of commitment of the offence, shall be excluded in computing his period of satisfactory service.

As observed in the Respondent's report dated on 18.01.2008,

Some increments were granted to complainant and they listed following charges against the complainant. They are,

- Late attendance
- Leave office without the prior permission from the authority
- Irresponsible behavior in his tasks

- Obtained additional leave without prior approval
- Failure to do his allocated tasks
- Non submission of monthly report

Even though the said facts are adequate to state that the complainant was not entitled to promotions and salary increments (2005). The Establishment Code and Public Service Commission Procedural Rules have the provisions to grant the stopped increments or promotions after a specified period.

In that aspect, the Respondent had failed to act according to the provisions of the Establishment Code II in holding a preliminary investigation, framing charge sheet and instituting a formal disciplinary inquiry. Since the petitioner was not treated in accordance with "these essential requirements of justice and fair play", he was denied the equal protection of the law.


Conclusion

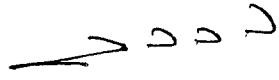
Therefore, it is hereby concluded that the Respondent **has violated the fundamental rights** of the complainant guaranteed by Article 12(1) of the Constitution.

Recommendation

As per the observations above, following recommendations are warranted.

- As terms of the provision in Section 15(4) of the HRC Act recommend the Respondent to hold the disciplinary inquiry according to the provisions of Establishment Code II.
- In terms of the provisions in Section ii(g) of the HRC Act recommend the respondent to pay the complainant/s a suitable sum as costs incurred by him or her for the complaint made.


Anusuya Shanmuganathan
Commissioner
Human Rights Commission of Sri Lanka.


M.H. Nimal Karunasiri
Commissioner
Human Rights Commission of Sri Lanka.

Ms. Anusuya Shanmuganathan
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