

Summary of Constitutional Court Ruling

No. 9/2563 (2020)

Dated 10th June B.E. 2563 (2020)

Re: Whether or not section 9 of the Government Official Pensions Act (No. 5) B.E. 2502 (1959) was contrary to or inconsistent with section 4 and section 26 of the Constitution.

1. Summary of background and facts

The Central Administrative Court referred the objection of a plaintiff (Colonel Akkarawich or Suthipong Charoenporn) in Case No. 1252/2561 to the Constitutional Court for a ruling under section 212 of the Constitution. The facts in the letter referring the plaintiff's objection and supporting documents could be summarized as follows. The plaintiff filed an action against the Comptroller-General's Department, first respondent, and Comptroller-General, second respondent, in the Central Administrative Court, seeking an amendment to the order for payment of regular pensions, which both respondents issued orders for payment of regular pension to the plaintiff in an amount equal to the final monthly salary. This calculation was in accordance with section 32 of the Government Official Pensions Act B.E. 2494 (1951), which provided that the final monthly salary should be divided by fifty and multiplied by the number of years in official service. Under such calculation, the plaintiff's pension should exceed the final monthly salary. The second respondent, however, in accordance with regular pension, paid an amount which did not exceed the final monthly salary despite the plaintiff's entitlement to extra service time added to the length of official service for pension calculations, totalling 53 years. As a consequence, the final calculations should exceed the final monthly salary. It was argued that section 9 of the Government Official Pensions Act (No. 5) B.E. 2502 (1959), which limited pensions to an amount not exceeding the final monthly salary, specifically restricted the pension rights of a government official who had served for a period longer than 50 years in the official service and was not a law which applied generally, but specifically applied to a case. Furthermore, the promulgation of this Act did not specify the reasons and necessities for restriction of right. This was not in accordance with the prerequisite under the Constitution, contrary to the rule of law. The restriction of right was disproportionate, contrary to the principle of equality which entitled a person to receive pensions in accordance with one's period of official service. Section 9 of the Government Official Pensions Act (No. 5) B.E. 2502 (1959) was therefore contrary to or inconsistent with section 4, section 5 and section 26 of the Constitution.

The Central Administrative Court was of the opinion that a decision on the substantive issues of the case required a preliminary decision on the issue raised by the plaintiff's application on whether or not, and how, payment of regular pensions was subject to section 9 of the Government Official Pensions Act (No. 5) B.E. 2502 (1959). This was a case where the Central Administrative Court had to apply the provisions of section 9 to a case and there had not yet been a relevant ruling of the Constitutional Court. Such opinion and objection was therefore referred to the Constitutional Court for a ruling under section 212 of the Constitution.

2. Preliminary issue

The preliminary issue was whether or not the Constitutional Court had the competence to accept this objection letter for consideration under section 212 of the Constitution.

After deliberations, the Constitutional Court found that this was a case where the Central Administrative Court referred the objection of a plaintiff and the Central Administrative Court had to apply section 9 of the Government Official Pensions Act (No. 5) B.E. 2502 (1959) to a case. Upon the plaintiff filing an objection along with reasons that such provision of law was contrary to or inconsistent with the Constitution, and that there had not yet been a ruling of the Constitutional Court in relation to such provision, the case was therefore in accordance with section 212 paragraph one of the Constitution. The Constitutional Court therefore ordered the acceptance of this order for consideration.

3. The issues considered by the Constitutional Court

The issue considered by the Constitutional Court was whether or not section 9 of the Government Official Pensions Act (No. 5) B.E. 2502 (1959) was contrary to or inconsistent with section 4 and section 26 of the Constitution.

After deliberations, the Constitutional Court found as follows. The Government Official Pensions Act B.E. 2494 (1951), as amended, was a law which provided rules, procedures and conditions for pension benefits and procedures determining the period of official service for calculating pension benefits of a government official, applicable to military officials and civil servants. Section 9 of the Government Official Pensions Act (No. 5) B.E. 2502 (1959) provided the principle that a regular pension should not exceed the final monthly salary. When this provision was considered in conjunction with the procedure for calculating pensions, whereby under section 32 of the Government Official Pensions Act B.E. 2494 (1951) the final monthly salary was divided by fifty and multiplied by the number of years of official service, a person who could receive a pension equal to the final monthly salary had

to serve in the official service for at 50 years or more. Generally, a government official would be in the official service for less than 50 years since section 36 of the Civil Service Act B.E. 2551 (2008) provided that a person joining the official service had to attain the age of at least eighteen years. Hence, it was perceivable that a government official who joined the official service at the age of 18 years and retired from official service at upon attaining 60 years of age, such government official would have been in the official service for 42 years. Upon applying this calculating procedure, such government official would receive a pension less than the final monthly salary.

Furthermore, pension constituted a monetary compensation for retiring government officials paid out from the national budget under the principle of fiscal discipline. When calculating pensions, the “final monthly salary” included special monthly supplements for technical expertise and/or supplements for promotions and/or for positions which regularly faced threats, and/or for engaging in battles and/or for suppression of offenders. These benefits were granted to a government official for the prolonged service in such duties and a special distribution of benefits to enable appropriate subsistence. At the same time, the state had to avoid such benefits from becoming an inappropriate overburden on the national budget to the extent of affecting the fiscal standing of the country in accordance with section 62 of the Constitution which provided that the state had to strictly observe fiscal discipline. The provisions of section 9 of the Government Official Pensions Act (No. 5) B.E. 2502 (1959), despite restricting the rights of a person, was a proportionate restriction which balanced the benefits of the public and the rights of a government official who had officially served the public. The restriction did not affect the regular pension calculated in accordance with the actual length of official service, which was a fundamental right available to all government officials. This was consistent with the principle of proportionality and neither contrary to nor inconsistent with the rule of law, human dignity and equality of persons. The provision of law was also generally applicable and not directed to any particular case or person. Therefore, section 9 of the Government Official Pensions Act (No. 5) B.E. 2502 (1959) was neither contrary to nor inconsistent with section 4 and section 26 of the Constitution.

As for the objection that the Government Official Pensions Act (No. 5) B.E. 2502 (1959) did not specify the reasons and necessities for restriction of rights and liberties of a person, this was an objection that the Act was not properly enacted in accordance with the provisions of the Constitution. The Constitutional Court had already laid down a precedent on this issue that an application under section 212 of the Constitution did not grant the right to object that a law had not been properly

enacted in accordance with the provisions of the Constitution. The Constitutional Court did not have to give a ruling on this issue.

4. Ruling of the Constitutional Court

The Constitutional Court therefore held that section 9 of the Government Official Pensions Act (No. 5) B.E. 2502 (1959) was neither contrary to nor inconsistent with section 4 and section 26 of the Constitution.
