

Tribunal Constitucional Plurinacional de Bolivia

SENTENCIA CONSTITUCIONAL PLURINACIONAL 0066/2019-S1

Sucre, 3 de abril de 2019

SALA PRIMERA

Magistrada Relatora: MSc. Georgina Amusquivar Moller

Acción de amparo constitucional

Expediente: 25135-2018-51-AAC

Departamento: Chuquisaca

III. FUNDAMENTOS JURÍDICOS DEL FALLO

El accionante alegó la vulneración de sus derechos al trabajo, a una remuneración justa y a la no discriminación; en el entendido que, la autoridad demandada procedió a su destitución en el cargo de Operador II de la Administración del Puerto de Arica de la República de Chile dependiente de la ASP-B, bajo el único argumento que su perfil profesional de "militar" no cumple con el POAI, requisito que no se encontraba establecido a momento de su designación.

En consecuencia, corresponde analizar en revisión, si los hechos denunciados son evidentes a fin de conceder o denegar la tutela solicitada.

III.1. De los servidoras y servidores públicos provisorios o eventuales y de aquellos funcionarios de carrera

Al respecto la SCP 0542/2015-S2 de 22 de mayo, haciendo un análisis de los funcionarios públicos manifestó que: "...existen dos clases de servidores públicos: a) Los electos, designados, de libre nombramiento, de carrera; y, b) Los interinos; últimos éstos que se vinculan a una entidad de manera temporal o con carácter eventual, pudiendo ocupar cargos previstos para la carrera administrativa.

Debe considerarse que entre ambos grupos, existen diferencias esenciales que los distinguen, las cuales han sido identificadas por la SC 0474/2011-R de 18 de abril, que al efecto señaló: "...la diferencia entre ambos radica en las previsiones por los arts. 7.II y 7.I de la indicada norma legal, que rige el sistema de administración de personal en las entidades públicas. En síntesis, el servidor público de carrera, es aquel que independientemente de gozar de los mismos derechos que los demás previstos en el art. 7 del EFP, tiene derecho a la inamovilidad laboral y en su caso a impugnar toda determinación relacionada

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Sabine Zange



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