

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

A. R. A. Sathar
No. 504 A,
Central Road,
Maruthamunai. 3.

PETITIONER

C.A 195/2008 (Writ)

Vs.

1. Chief Manager (HRM)
People's Bank, Head Office,
P. O Box 728,
Colombo 2.
2. People's Bank
Head Office,
P. O. Box 728,
Colombo 2.

RESPONDENTS

BEFORE: Anil Gooneratne J.

COUNSEL: M. Nizam Kariyappar with M.I.M. Iynullah
For the Petitioner

Rasika Dissanayake for Respondnets

ARGUED ON; 22.10.2012

DECIDED ON: 12.12.2012

GOONERATNE J.

The Petitioner an employee of the 2nd Respondent Bank has filed this application for a Writ of Mandamus directing the 1st Respondent a Chief Manager of the People's Bank to hear and finally dispose the appeal of the Petitioner marked P5. This document P5, is described as an appeal against the order of punishment imposed on the Petitioner.

The Petitioner joined the People's Bank according to his petition on or about 6.11.1978. Having served the Bank in a number of branches the Petitioner was promoted as a Second Officer on January 1996. Petitioner also inform this court that by the December 2004 Tsunami, his house was affected and lost certain documents. Whilst serving the "pawning and servicing centre" in the People's Bank as 2nd officer at Maruthamunai he was interdicted by letter P1 for alleged misconduct. The charge sheet P2 was served on the Petitioner and he was required to explain. A domestic inquiry was held by the 2nd Respondent Bank. Thereafter on conclusion of the domestic inquiry and having found him guilty of charges Bank dismissed the Petitioner from service (P4). Letter P4 is dated 19.10.2006. Dismissal takes effect according to P4 from 27.5.1005. Being aggrieved by the decision in letter P4, the Petitioner appealed to the 1st Respondent by his appeal of

15.11.2006 (P5). Petitioner has annexed P6 the Disciplinary Code of the People's Bank.

The complaint of the Petitioner is that despite his appeal as aforesaid the 1st & 2nd Respondents had not taken any steps to hear and conclude his appeal. The Petitioner has through his Attorney-at-Law has demanded the authorities concerned by letter P7 to hear and conclude the appeal.

Petitioner complains that failure of the Respondent to conclude his appeal has resulted him seeking legal remedy in a court of law and he was also compelled to withdraw his Labour Tribunal application. There is also reference to another document P8 being another letter to the authorities to take up his appeal.

The Respondents in their objection inter alia pleads the following:

- (a) that the Petitioner is guilty of undue delay in making his application as his services were terminated on 19.10.06;
- (b) that since the relationship between the petitioner and the 2nd Respondent is a contractual relationship the purported duty sought to be enforced is not a statutory duty;
- (c) that the Petitioner sought relief by making an application to the Labour Tribunal and as the said application was time barred he withdrew his application after the 2nd Respondent filed answer;

- (d) that the Petitioner failed to reserve his rights to seek relief elsewhere when withdrawing his application that he made to the Labour Tribunal.
- (e) That the Petitioner has made the present application as an attempt to overcome the statutory bar he encountered when he sought relief from the Labour Tribunal.

Having considered the submissions of either party it is apparent that there is in fact an inordinate delay in filing this application for a Writ of Mandamus by the Petitioner. The delay amounts to over one year. This being a discretionary remedy of court, delay in filing an application would disentitle a party from seeking a legal remedy. The Respondents also plead that there is no statutory duty cast on the Respondents towards the Petitioner. The relationship is a mere contractual relationship and writ does not lie. The learned counsel for Respondent has cited, *K.S de Silva Vs. National Water Supply & Drainage Board* 1989 (2) SLR 120.

Per G.P.S. de Silva J. held: that if the appointment is contractual the writ does not lie. A distinction must be drawn between duties enforceable by mandamus which are usually statutory and duties arising merely from contracts.

Gawarammana Vs. Tea Research Board (2003 (3) SLR 120) is a case where the services of the Petitioner who was employed as a Transport officer of the Tea Research Board was terminated after inquiry. A writ of certiorari was sought to quash the decision to terminate his service and a writ of

Mandamus to compel the Respondents to re-instate him. In that his Lordship justice Sripavan held:

- (a) The employment of the Petitioner under the Tea Research Institute was contractual and as such no writ lies to remedy grievances from an alleged breach of contract of failure to observe the principles of natural justice.
- (b) Powers derived from contract are matter of private law. The fact that one of the parties to the contract is a public authority is not relevant since the decision sought to be quashed by way of Certiorari is itself was not made in the exercise of any statutory power.

The other matter urged by the Respondent is that there is no public duty that arise by staff circular P6. It is the submission of Respondents that it is an internal circular without any statutory force. As such by a public duty cannot be enforced on the 2nd Respondent Bank.

In *Waligama Multi-Purpose Corporate Society Ltd. Vs. C. Daluwatta* 1984 (1) SLR 195. Where the court held that the duty prescribed by clause 7 of circular No. 18 of 1973 is not in the nature of a public duty such as to attract the grant of Mandamus for its enforcement.

On the alternative remedy the Respondent submit the following:

1. On or about 18th June 2007 the Petitioner had preferred an application to the Labour Tribunal seeking inter alia a re-statement and to recover the arrears of salary.

2. the said application had been made about seven month after the termination of the Petitioner's service.
3. the Respondent bank in its objections filed in the Labour Tribunal raised a preliminary objection that the Petitioner's application is time barred.
4. Since the said application could not be maintained the Petitioner withdrew the same on 6th December 2007.

In all the circumstances of this application I am not inclined to grant relief to the Petitioner. I am in agreement with the submissions of Respondents that there is an inordinate delay. The delay seems to be two fold. Petitioner's application to the Labour Tribunal has also been filed outside the time period permitted by law, even though the Petitioner need to exhaust his alternate remedies. Further the relationship between employer and employee in the case in hand is of a contractual nature and writ should not lie. (arguable). In any event the grant of Mandamus is a matter for discretion of the court. It is not a writ of right and is not issued as a matter of course 1 CLW 306; to seek a Writ of Mandamus one must make out a legal right and a legal obligation 1 NLR at 35. In all the circumstances I cannot find a valid ground to favour the Petitioner. As such I reject the Petitioner's application. Application dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL