

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

In the matter of an application of Writ of Certiorari and /or Mandamus in terms of Article 140 of the Constitution.

C.A (Writ) Application No: 53/2011

Undugodage Raveendra samarasekara
Rodrigo,
67/81, Jayaweeragoda,
Hanwella.

Petitioner

Vs

- 1) Inspector General of Police
Police Headquarters,
Colombo 01.
- 2) Director,
Personal Administration,
Police Reserve headquarters,
101/1,
Kew Road, Colombo 02.
- 3) Senior Superintendent of Police-
Polonnaruwa Division, SSP Office,
Polonnaruwa.
- 4) Senior DIG - Administration,
Police Headquarters,
Colombo 01.
- 5) Director- Ombudsman Division,
Police Headquarters,
Colombo 01.
- 6) Hon. Attorney-General
Attorney-General's Department,
Colombo 12.

Respondents



C.A. Writ Application No.53/2011

BEFORE : **S. Sriskandarajah J. (P/CA)**
Deepali Wijesundera J.

COUNSEL : Kapila Suriyarachchi for the
Petitioner.
Anusha Fernando SSC for the
Respondent.

ARGUED &
DECIDED ON : 19th January, 2012.

S. Sriskandarajah J. (P/CA)

The petitioner in this application is seeking a writ of certiorari to quash the decision reflected in document marked P5 which is a rejection of an appeal made by the petitioner to the Inspector General of Police. The petitioner also has sought a writ of mandamus compelling the respondents to reinstate the petitioner with the arrears of his salary.

The petitioner joined the Sri Lanka Police Reserve as a reserve police constable on the 28th of December 1992. On the 11th of October 1999 on an allegation of bribery of Rs.300/= the petitioner's services was suspended with effect from 11th of October 1999. It is the contention of the respondents that a statement of the petitioner was recorded and a report was prepared by the

A.S.P Mr.Ratnayake and was submitted to Senior Superintendent of Police Pollonnaruwa. The Senior Superintendent of Police in turn forwarded a report recommending the demobilization of the petitioner from the police reserve post to the commandant of Sri Lanka, Police Reserve Head Quarters. The Commandant in his report dated 15.11.2001 has recommended to the I.G.P. that the petitioner be demobilized and accordingly the petitioner had been demobilized from the Reserve Police Force with effect from 2001. The petitioner contended that the petitioner was not aware and there was no communication with regard to his demobilization at anytime and after the petitioner was discharged from the Magistrate's Court case that was instituted against him, he had made an appeal to the I.G.P. to reinstate him and the appeal was rejected by the document marked P5. The petitioner in this application is challenging the said rejection of his appeal.

As the petitioner was demobilized by the I.G.P. the petitioner's appeal to reinstate him to his service has no merit and therefore the petitioner's challenge to the said rejection of the appeal has no basis.

The petitioner has also submitted that the demobilization of the petitioner was not communicated to him and in any event that the said demobilization was done without giving him a hearing. The learned Counsel for the petitioner relied on the judgment of **Abdul Cader Ayooob vs. The Inspector General of Police and others 1997 1 SLR page 412** and submitted that a public authority has no absolute and unfettered discretion in public law. Learned Counsel submitted that in these instances the I.G.P. had acted arbitrarily without giving a fair hearing to the petitioner.

It appears from the affidavit submitted by the 1st respondent that on the allegation of bribery a statement was recorded from the petitioner and on that statement recommendations were submitted to the I.G.P. by the ASP, SSP and the Commandant of the Reserve Police Force. The I.G.P. After giving careful consideration of these recommendations and the statement of the petitioner has decided to demobilize the petitioner. In these circumstances it cannot be heard to say that the 1st respondent had acted arbitrarily in arriving at the said decision. The petitioner has sought a writ of mandamus directing the respondent to reinstate him with back wages

from 2006. As the demobilization has been done according to the procedure established and as the Police Reserve Force has ceased to exist from 2006 the petitioner is not entitled to seek a writ of mandamus. For the aforesaid reasons this Court dismisses this application without costs.

PRESIDENT OF THE COURT OF APPEAL

Deepali Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL

Kwk/=