

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

In the matter of an application for writs in the
nature of Certiorari and Mandamus under
Article 140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka

Premasiri Hettiarachchi
Kuttampokuna, Outer Circular Road,
Anuradhapura.

PETITIONER

CA. Writ App. No. 815/2009

Vs

1. Justice N.E. Dissanayake
Chairman,
2. Justice A. Somawansa
Member
All of Administrative Appeals Tribunal,
No.05, Dudley Senanayake Mawatha,
Colombo 08.
3. A Coorey,
Secretary,
Public Service Commission,
No.356/B, Carlville Place,
Galle Road, Colombo 03.
4. K.M.S. Kandegedara
Commissioner General to the Department of
Inland Revenue, Administrative Branch,
Inland Revenue Building, Sir Chittampalam
A. Gardiner Mawatha Colombo 02.
5. Secretary to the Ministry of Finance & Planning,
The Secretariat,
Colombo 01

RESPONDENTS

CA Writ Application No. 815/09

Before : Rohini Marasinghe. J.

Counsel : Pasindu Silva for the Petitioner

Mrs. M.N.B. Fernando, DSG for the Respondent

Argued &

Decided on : 13.06.2012

Rohini Marasinghe, J.

Heard submissions of both counsel. This case involves three circulars. They are namely, PA Circular No. 30/2008 dated 30.08.1988, PA Circular No. 07/2004(I) dated 15.12.2004 and PA Circular No. 07/2004(II) dated 31.10.2007. I shall now deal with each of these circulars.

PA Circular No. 30/88

Pursuant to this circular a public officer is able to retire after completing 20 years in public service and is eligible to receive his pension only when he reaches the age of 55. The only criterion that was required to be fulfilled under this Circular was that the public officer should have completed 20 years in public service.

PA Circular No.07/2004(I)

This circular applies to public servants who hope to exercise political rights. Normally a public servant is not entitled to exercise political rights as long as he is in public service.

This circular allowed any public officer who had served 10 years in public service to resign from public service and exercise political rights. The criteria under which a public servant could resign under this circular was i) he should possess 10 years or more in pensionable service, II) intends to stand for election in a future date, III) should tender his notice of resignation 10 days before the date of submitting papers for nomination.

Consequently, intention to do politics and handing over of nominations were mandatory requirements for a public officer who intends to resign under the circular.

PA Circular No. 07/2004(II)

This circular withdrew the circular 07/2004(I) with immediate effect with the condition that “ the any unresolved issues pertaining to instances the officers who are not entitled to political rights have contested elections, shall be referred to the Public Service Commission for its decision.”

The effect of Circular No. 07/2004 (I)

The circular 07/2004(I) on his own would have had no statutory Authority. But pursuant to Circular No. 07/2004(I), Section 1 of Chapter XXXII of the Establishment Code (hereinafter referred to as E. Code) was amended. The E.Code, is the Code in which procedure is laid down for making appointments to the Public Service. The Section 1 of Chapter XXXII was amended. By such amendment, the Public Officers who had retired or resigned to exercise political rights were entitled to re-enter the same service by making an application to that effect. The procedure under which an application should be made to re-enter Public Service was also specified in the amended section.

(Section IV (b). The Sections that are relevant to this application are, the Section I (i) and Section IV (b) of chapter XXXII of the E-Code.

The amended Section 1 IV (b) of Chapter XXXII of the E-code reads as follows;

"According to Section 1:3 Chapter XXXII of the Establishments Code as amended by Public Administration Circular No. 7/2004 dated 15.12.2004, a Public Officer not entitled to exercise political rights who has resigned or retired from the post held by him in the Public Service of the Provincial Public Service, has to submit an appeal complying with the following requirements if he wishes to re-enter the service."

The facts alleged by the petitioner by this application were briefly as follows;

The petitioner had joined the Public Service in year 1977. The petitioner had contested as a candidate in the North Central provincial Council election which was held in 1999. He was elected as the member of the North Central Provincial Council in the year 1999 and became the Deputy Chairman of the Council in year 2002. The petitioner again contested the North Central provincial Council in year 2004 but was not successful.

Then the petitioner submitted an appeal in terms of section iiv (b) of the amended section 1 of chapter XXXII of the E Code. The Head of the Department to which the petitioner was attached as public service officer, on the date of retirement was the Ministry of Finance and Planning. The petitioners made an application to the said Ministry which recommended the application of the petitioner. (P5). The recommendation was sent to the Cabinet of Ministers for approval. The Cabinet of

Ministers approved the application of the petitioner to re-enter public service as provided by PA circular 07/2004(1). The approval was sent to the PSC for the reinstatement. (P6). The petitioner was informed by the letter P9 that, the PSC had rejected the application of the petitioner. The petitioner appealed against that decision of the PSC to the AAT. The AAT rejected the appeal by P11. The petitioner then, filed this application seeking a writ of certiorari to quash the decision contained in P 11. And the petitioner also sought a writ of mandamus to compel the AAT to direct PSC to withdraw the letter P9 and re-instate the petitioner as prayed for in the petition.

I do not intend to examine the correctness of the determinations of the AAT and PSC. The application of the petitioner is rejected on another relevant and material fact namely, the petitioner is not entitled to any relief under PA circular 07/2004(1). That circular is applicable to those public officers who had resigned under that circular. Admittedly, the petitioner had not retired or resigned under the circular from which he (petitioner) is now seeking relief.

Therefore, I am of the view that the petitioner cannot proceed with this application.

The application is dismissed.

JUDGE OF THE COURT OF APPEAL

LA/-