

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

In the matter of an application in terms  
of Article 140 of the Constitution for  
orders in the nature of a Writ of  
Certiorari, Mandamus and Prohibition.

1. U.D.M. Ratnakumara, No.57, Steel  
Road, Dangedera, Galle.

**Petitioner**

C.A. (Writ) Application No.232A/2007

Vs.

1. Ven. Kakunewela Medhananda  
Thero,  
Manager, Ga/Sri Vidya Pradeepa  
Pirivena, Manawila, Walahanduwa.

2. Ven. Keradevala Punnarathana  
Thero,  
Principal, Ga/Sri Vidya Pradeepa  
Pirivena Manawila, Walahanduwa.

And another 17 Respondents

**Repondents**

BEFORE : **S.Siskandarajah, J, P/CA**

COUNSEL : Chandana Wijesuriya,  
for the Petitioners.  
  
D.Akurugoda with D.Edirisuriya  
for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.  
  
Y.J.W.Wijeyatilake, PC,ASG with Chaya Sri Nammuni SC  
for the 3<sup>rd</sup> to 9<sup>th</sup> Respondents

Argued on : 09.06.2011

Decided on : 18.09.2012

**S.Sriskandarajah, J**

The Petitioner is a Pirivena Teacher attached to Sri Vidya Pradeepa Pirivena, Manawila, Walahanduwa. The 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent are the Manager and Principal respectively of the said Pirivena. The Petitioner submitted that in order to contest the Local Government Election for Municipal Council of Galle to be held on the 3<sup>rd</sup> of March 2006, he had sought approval from the 2<sup>nd</sup> Respondent by a letter dated 5<sup>th</sup> February 2006 for no-pay leave. The Petitioner submitted that he had not got leave approval until 15/02/2006, and when he inquired from the 2<sup>nd</sup> Respondent about the no-pay leave, he was informed that the said application for leave had been misplaced. The Petitioner submitted that he handed over another application for leave dated 15/02/2006 to the 1<sup>st</sup> Respondent. The Petitioner submitted that after the 16<sup>th</sup> of February 2006, he did not attend for work as he was involved in the election campaign. The Petitioner submitted that he had a legitimate expectation that he would be given no-pay leave, as requested.

The Petitioner submitted that Local Authorities Election for the Municipal Council of Gall were held on 20.05.2006 which was a Saturday and the Petitioner being unsuccessful at the elections wrote a letter dated 22.05.2006 to the 2<sup>nd</sup> Respondent and informed that the Petitioner would be reporting for work on 23.05.2006 and accordingly the Petitioner reported for work on 23.05.2006. The 1<sup>st</sup> Respondent, by a letter dated 23/05/2006, informed the Petitioner that the Petitioner's services had been unsatisfactory and that it remained unchanged despite several advises and that the Petitioner had taken leave without the approval of the 1<sup>st</sup> Respondent, that the Petitioner's obtaining excessive leave had gravely affected the education of the students and, therefore, the 1<sup>st</sup> Respondent had requested the Petitioner, either to resign from the post or to obtain a transfer.

However the Petitioner was performing his duties as before in the said Pirivena but the salary of the Petitioner was not paid even though he had made several request to pay his salaries to the authorities. The Petitioner further submitted that on 11/09/2006, when he went to the Pirivena to report for work, the 2<sup>nd</sup> Respondent prevented the Petitioner from signing the Attendance Register and he was asked not to report for work. The 2<sup>nd</sup> Respondent had informed the Petitioner that his services were no longer required. The Petitioner submitted that as he was not issued any letter with regard to the said decision of the 2<sup>nd</sup> Respondent to prevent the Petitioner from reporting for work, the Petitioner requested the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, by his letter dated 25/09/2006, to give him the decision in writing. To this request the Petitioner was issued with a letter dated 11/09/2006 (which was back dated) addressed to the 4<sup>th</sup> Respondent in which it has been stated, inter alia, that the 1<sup>st</sup> Respondent had informed the 2<sup>nd</sup> Respondent to suspend the services of the Petitioner and employ another Teacher.

The Petitioner, by his letter dated 11/10/2006, protested to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, stating that his services had been suspended without any prior notice or any disciplinary inquiry being held, and requested that the Petitioner be permitted to report for work. The Petitioner submitted that the decision of the 1<sup>st</sup> Respondent to suspend or to constructively terminate the services of the Petitioner contemplated in document marked P19 dated 11/09/2006 is contrary to law and in violation of the principle of natural justice and, therefore, he has sought a Writ of Certiorari to quash the said decision of the 1<sup>st</sup> Respondent.

The Respondent submitted that the Petitioner had submitted his leave application only on 15/02/2006, whereas leave was to commence from 16/02/2006, but as this document was not traceable, the Petitioner had submitted another leave application on 25/02/2006, requesting for leave from 16/02/2006. The Respondent submitted that the Pirivena institution is an educational institution where the students are being prepared for examinations, hence leave granted to teachers only if that is not detrimental to the service. The 1<sup>st</sup> Respondent did not recommend the leave application using his discretionary powers on exigencies of service and also for the reasons that the application had not been submitted in time. As the Petitioner was absent without approved leave, on 11/09/2006 the 1<sup>st</sup> Respondent had served the Petitioner a Charge Sheet regarding the absence of the Petitioner without leave from 16/02/2006 to 23/05/2006 from the Pirivena institution. The Respondent submitted that the service of the Petitioner was suspended as keeping him any more would be detrimental to the progress of the institution. The Petitioner in this application has sought a Writ of Certiorari to quash the suspension order made in the document marked P19 dated 11/02/2006.

The decision to suspend the Petitioner according to the 1<sup>st</sup> Respondent is in the best interests of the institution, and the order is only a suspension and not a removal or dismissal from the position that he was holding in the said Pirivena institution. The 1<sup>st</sup>

Respondent had also submitted that by the letter dated 11/09/2006, a Charge Sheet had been served on the Petitioner. When there is an inquiry pending and before an final decision is reached in the inquiry, in the interests of the institution a person to whom a Charge Sheet had been served, could be suspended from his service without giving him a hearing as he would be given a full hearing at the stage of the inquiry.

As the order of the 1<sup>st</sup> Respondent is a suspension order and a temporary order, this court is of the view that the Petitioner is not entitled to a hearing at this stage; therefore, an order of suspension cannot be challenged by way of Writ of Certiorari as the 1<sup>st</sup> Respondent has the authority to issue a suspension order on a Teacher of the Pirivena pending an inquiry. For these reasons this court refuses to issue a Writ of Certiorari to quash the said suspension order issued to the Petitioner by document marked P19 dated 11/02/2006. In the interests of justice it is important for the 1<sup>st</sup> Respondent, being a statutory authority, to inquire into the Charge Sheet issued on the Petitioner and to arrive at a decision early.

As the issue raised in this petition is not amenable to a Writ of Certiorari, this court dismisses this Application without costs.

President Court of Appeal