

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

**In the matter of an application for  
Mandate in the nature of Writ of  
Certiorari in terms of Article 140  
of the Constitution of the Democratic  
Socialist Republic of Sri Lanka.**

**C.A. Writ. 670 / 2009**

Central Cultural Fund,  
No 212/1, Bauddhaloka Mawatha,  
Colombo 07.

**Petitioner**

**Vs**

1. P. Danansuriya,  
Arbitrator,  
Department of Labour,  
Labour Secretariat,  
Narahenpita, Colombo 05.
2. Hon. Gamini Lokuge,  
Ministry of Labour Relations and Manpower  
Ministry of Labour,  
Labour Secretariat, Colombo 05.
3. Commissioner General of Labour,  
Department of Labour,  
Labour Secretariat,  
Narahenpita, Colombo 05.
4. D. G. T. Dodamwala,  
Weligodawella, Bombuwala,  
Kalutara South.

**Respondents**

**Before** : SRI SKANDARAJAH, J. (PCA)  
UPALY ABEYRATHNE, J.

**Counsel** : Riad Ammen for the Petitioner  
Deepthi Thilakaratne SSC for the 1<sup>st</sup> 2<sup>nd</sup> and  
3<sup>rd</sup> Respondents  
C. J. Fernando for the 4<sup>th</sup> Respondent

**Argued on** : 21.06.2011

**Decided on** : 13.07.2011

**UPALY ABEYRATHNE, J.**

The Petitioner is a body corporate incorporated under the Central Cultural Fund Act No 57 of 1980. The 4<sup>th</sup> Respondent had been appointed to the post of Excavating Officer Grade 111 of the Central Cultural Fund by letter dated 29.12.1992. Thereafter the 4<sup>th</sup> Respondent had been promoted to the post of Excavating Officer Grade 11 and thereafter to Grade 1 by letters dated 02.04.1993 and 17.06.1994 respectively. By letter dated 08.02 2000 the 4<sup>th</sup> Respondent was assigned the duties of “Officer in Charge” Ramba Vihara Project in the Hambantota District. Thereafter the 4<sup>th</sup> Respondent by letter dated 10.10.2005 claimed acting salary under paragraph 12:5:4 of the Establishment Code on the basis that he was acting in the post of “Officer in Charge” whilst holding the substantive post of Excavating Officer Grade 1.

The Petitioner took up the position that the Central Cultural Fund did not have a post called “Officer in Charge”; the term “Officer in Charge” was used in

order to describe an assignment of duties and hence the 4<sup>th</sup> Respondent was not entitled to claim an acting salary. Thereafter the dispute between the Petitioner and the 4<sup>th</sup> Respondent had been referred to the 1<sup>st</sup> Respondent under section 4(1) of the Industrial Dispute Act. The 1<sup>st</sup> Respondent after an inquiry had awarded to the 4<sup>th</sup> Respondent a sum of Rs. 184,208.25 equal to  $\frac{1}{4}$  of the salary of the Excavating Officer Grade I as an acting pay.

Being aggrieved by the said award the Petitioner is now seeking from this court a mandate in the nature of a writ of certiorari to quash the said award dated 18.06.2009 made by the 1<sup>st</sup> Respondent.

At the hearing of this application the learned counsel for the Petitioner submitted that;

- a. The petitioner used the term “Officer in Charge” in order to describe an assignment of duties.
- b. The Petitioner does not have a post called “Officer in Charge”.
- c. The 4<sup>th</sup> Respondent does not satisfy the requirements stipulated in paragraph 12 of Chapter VII of the Establishment Code relating to payment of acting salaries.

It appears from the said award that the 1<sup>st</sup> Respondent has made it on the basis that since the said “Officer in Charge” had been appointed by the Petitioner although the name of the post is different the post of “Officer in Charge” has to be considered as an approved post.

It is important to note that the 4<sup>th</sup> Respondent had admitted at the inquiry that there was no post called “Officer in Charge” in the Central Cultural Fund. The

paragraph 12 : 2 of the Establishment Code stipulates that “ If an officer holding a substantive post in the public service is appointed to act in another post, he will be entitled to acting pay.” It is clear from the said paragraph that an officer would be entitled to an acting pay, only if he is appointed to act in another post. That means that the entitlement to claim an acting salary derives from the acting in another post. In the above context if there is no post called “Officer in Charge” in the Central Cultural Fund the 4<sup>th</sup> Respondent would not be entitled to an acting salary.

The contention of the 4<sup>th</sup> Respondent was that he was entitled to an acting salary under paragraph 12 : 5 : 4 of the Establishment Code. The said paragraph of the Establishment Code stipulates as follows;

“12 : 5 : 4 If while an officer acts in a post he also holds a substantive post he should be paid as follows:-

If he is required to perform the full duties of both posts, one fourth of the initial salary of the office in which he acts, together with the whole of his emoluments in his substantive office. In the case of a post where a salary has not been fixed the  $\frac{1}{4}$  will be of a hypothetical salary to be determined, on application made, by the secretary to Ministry of Public Administration in consultation with the secretary to the treasury.”

When I consider the said paragraph it appears to me that the contention of the 4<sup>th</sup> Respondent is not within the ambit of the said paragraph of the Establishment Code. It is crystal clear that the said paragraph is applicable only if there is a post called “Officer in Charge”. If there is no such post exists in the Central Cultural Fund the 4<sup>th</sup> Respondent is not entitled to claim benefits under the said paragraph unless he has obtained the approval of the secretary to the treasury.

There was no such approval obtained either by the 4<sup>th</sup> Respondent or by the Petitioner.

When I consider the said circumstances I am of the view that the 1<sup>st</sup> Respondent has failed to adhere to the provisions contained in paragraph 12 : 5 : 4 of the Establishment Code. He has calculated the acting salary entirely on a wrong footing. Thereby the 1<sup>st</sup> Respondent has made errors of law by acting on the assumption that the post of “Officer in Charge” had been created by implication and also by granting an acting salary to the 4<sup>th</sup> Respondent equal to ¼ salary of a Excavation Officer Grade I in contrary to paragraph 12 : 5 : 4 of the Establishment Code.

For the forgoing reasons I make order to issue a mandate in the nature of a Writ of Certiorari quashing the award of the 1<sup>st</sup> Respondent dated 18.06.2009 marked P 9. The petitioner’s application for a writ of Certiorari is allowed with costs.

*Application for writ allowed.*

Judge of the Court of Appeal

SRI SKANDARAJAH, J. (PCA)

I agree.

President of the Court of Appeal