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

S.P. Siriwardena
No. 50, Bemmullegedera
Narammala.

PETITIONER

C.A 763/2008 (Writ)

Vs.

1. Provincial Council Public Service Commission-North Western Province, No. 44, Major General Ananda Hamangoda Mawatha, Kurunegla.

and 08 others

RESPONDENTS

BEFORE: Sathya Hettige P.C., J. (P/C.A) &
Anil Gooneratne J.

COUNSEL: Kamran Aziz for Petitioner

Vikum de Abrew S.S.C.
for 1st – 3rd, 7th – 9th Respondents

ARGUED ON: 21.07.2010

WRITTEN SUBMISSIONS FILED ON: 01.11.2010 & 26.08.2010

DECIDED ON: 23.05.2011

GOONERATNE J.

Petitioner a Technical Officer of the Galgamuwa Pradeshiya Sabha has sought a writ of certiorari to quash the decision to dismiss the Petitioner from service (prayer 'B'). Petition has been filed on or about September 2008. The decision to dismiss according to the petition was by letter of 30th May 2005 marked P5. It is averred that by P6 the Petitioner appealed to the Governor. Appeal had been rejected by P7 (13.12.2005). Thereafter it is averred that he appealed to the Public Petitions Committee of the North Western Provincial Council and that committee by P8. letter of 16th January 2008, informed the Petitioner that no action could be taken to interfere with the above decision to dismiss. In paragraph 8 of the petition it is stated that the delay in filing an application by way of certiorari was occasioned by the fact that he was waiting for a favourable out come of his appeal. The main questions that need to be decided is whether one could explain an inordinate delay on the part of the petitioner in the way it is pleaded and the question of bias? It is also observed that the prayer seeking relief does not with specific certainty refer to the decision to dismiss as referred to in document P5. Is it for reasons known or unknown to the Petitioner?

On perusing the petition and the corresponding affidavit of the Petitioner the following 3 grounds are urged in support of his application.

a. The evidence is totally insufficient to prove any act of wrong doing on the part of the Petitioner and is not reasonably capable of supporting the finding which in administrative law offends the 'no evidence' rule and denotes a perverse, unreasonable finding which is *ultra vires*;
b. The inquiry against the Petitioner was initiated as a result of the inquiry held against the then Secretary of the Galgamuwa Pradeshiya Sabha in respect of the same transaction at which the 3rd Respondent was again the Inquiring Officer. In proof hereof, a true copy of the findings arrived at by the 3rd Respondent in respect that inquiry is annexed hereto marked P9. The Petitioner states that the fact that the inquiry against him was held by the very officer who held the inquiry against the Secretary and recommended that the Petitioner be charge sheeted is demonstrative of bias and the findings arrived at the 3rd Respondent cannot withstand scrutiny on the basis of bias;
c. The punishment meted out to the Petitioner is highly disproportionate as he has been visited with the ultimate punishment of dismissal on the face of no evidence and in any event in the absence of any financial/pecuniary impropriety.

On perusing pleadings of either party I find that (b) above suggestive of bias is a valid ground. But the long delay on the part of the Petitioner may disentitled him of a remedy. On perusing the material placed before this court I cannot find any objection raised by the Petitioner against the 4th Respondent. Inquiry into the allegations of the Petitioner was held by the 4th Respondent. The Petitioner should have objected to the 4th Respondent hearing his disciplinary case or 4th Respondent proceeding to inquire. Instead

the Petitioner proceeded and participated with a representative at the inquiry. This court could have considered granting relief to the Petitioner if he objected as above. If a person against whom a Judge has given a decision the same Judge should refrain from hearing any subsequent case of the same party since either consciously or unconsciously a Judge may form a kind of prejudice against a party. This is an important principle of public law and if not followed, it would result in a mockery of justice and bound to lose public confidence.

It would be of academic interest as well as the practical approach to consider same in the conduct of inquiries by public officials in the nature of disciplinary inquiry like the inquiry held by the 4th Respondent against the Petitioner. In this regard the following may be noted.

Kumarasena Vs. Data Management Systems Ltd. (1987) 2 S.L.R 190 – Bias is not only that the Judge should be impartial. He must appear impartial in considering whether there was a real likelihood of bias. Impression given to other people matters. If there is a likelihood of bias Judge should not sit.

Raja vs. Seneviratne 1986 C.A.L.R 91... The Magistrate at whose instance the complaint had been made should not have properly proceeded to hear this case.

Administrative Law – Peter Leyland

Pg. 272/274.... The suggestion of bias might be raised in many ways e.g being a member of an organization that is connected to the proceedings, prejudicial statements that have been previously expressed by Judges or a adjudicators, friendship or previous association with any of the parties or family relationship.

The effect will be serious if the connection is not set out in advance of the hearing, because it is regarded as crucial that public justice should not be compromised by the least suspicion of judicial impropriety. If the connection is exposed it brings the whole process into disrepute. The principle issue is not whether the decision itself is legitimate but whether the decision maker (s) ought to have taken the decision in the first place, as the possibility of bias will undermine their credibility. The question of bias is particularly insidious and difficult to detect. Even if a person believes he or she is acting impartially and in good faith, his or her mind may be unconsciously affected by improper considerations that effect his or her judgment.

It is unfortunate that the Petitioner having a valid point to contest the disciplinary procedure, has failed to act promptly, to file a Writ of Certiorari. Letter P5 being the decision to terminate is dated 30.05.2005.

The application before this court was filed on or about 22.09.2008. There is a long inordinate delay to pursue his remedy. Writs being discretionary remedies courts cannot grant relief as a matter of course. Jayaweera Vs. Assistant Commissioner of Agrarian Service 1996(2) SLR 70 at 73 "Petitioner seeking a prerogative writ is not entitled to relief as a matter of course or as a matter of right or routine. Even if he is entitled to relief still court has discretion to deny him relief having regard to his conduct, delay, laches, waiver, submissions to jurisdiction are all valid impediments which stand against the grant of relief" Wade R.W. Forsyth C.F Administrative Law 9th Ed. 457...." But prior involvement does not always disqualify. This is not generally because the prior involvement is trivial but because given the nature of the proceedings it would be impracticable to disqualify.

The other aspect is about the uncertainty of the remedy. It is important to correctly plead the relief sought. One should never have a vague prayer. As far as possible there should be reference to the order or decision to be quashed. Court should not be called upon to supply the omission. Specific relief should be pleaded with certainty, Respondent also urge that there is non compliance with the rules of court. Report of the

inquiring officer (1R4) has not been annexed. This is also a relevant and important issue, and party to an action should strictly adhere to the rules of court and annex documents relied upon by him.

In all the above circumstances, when I consider the entirety of the material placed before court, it is very apparent that the Petitioner is guilty of laches, Prerogative writs are discretionary in nature. As such I am reluctantly compelled to dismiss this application, without cost.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Sathya Hettige J.

I agree.

PRESIDENT OF THE COURT OF APPEAL