

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

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

K.G.Subasinghe,
Yatigalpottha,
Galewela.

Petitioner

C.A/WRIT/App/No. 850/2008

Vs

1. N.E.Dissanayake, Chairman,
The Administrative Appeal Tribunal,
No.5, Dudley Senanayake Mawatha,
Colombo 8.

And twelve (12) others.

Respondents

BEFORE

: **S.SRISKANDARAJAH, J,**

COUNSEL

: Manohara de Sivla PC , with H.Hippola
for the Petitioner.

D.Tilakawardana SC

for the Respondents.

Argued on

: 25.10.2010 and 01.12.2010

Decided on

: 03.05.2011

S.Sriskandarajah, J.

The Petitioner while serving as a 'Wild Life Ranger' at the Minneriya National Park served with a letter of interdiction on 26.06.2000 interdicting him with immediate effect. A charge sheet dated 29.12.2000 was served on the Petitioner and the disciplinary inquiry commenced on 09.10.2001 and concluded on 01.07.2004. The inquiring officer submitted a report to the 13th Respondent exonerating the Petitioner from all charges. The 13th Respondent by his letter dated 09.08.2005 informed the Petitioner as follows:

- (a) All the decisions of the inquiring officer are rejected under provisions of paragraph 22.6 of Chapter XLVIII of the Establishment Code.
- (b) Having considered the fact that you have been under interdiction for more than 5 years upto now you are reinstated with immediate effect, subject to a fresh inquiry being held under paragraph 22:5:3 of XLVIII of the Establishments Code.

The Petitioner being aggrieved by the said decision of the 13th Respondent appealed to the Public Service Commission by his appeal dated 05.09.2005. The Public Service Commission after consideration of the appeal conveyed its decision as follows:

- (a) The decision of the disciplinary authority to cancel the disciplinary inquiry held and to hold a fresh disciplinary inquiry should stand.
- (b) The new disciplinary inquiry should be held based on the original charge sheet.
- (c) If the disciplinary authority decides to amend the said charge sheet it can be done in accordance with the provisions of the Establishments Code.

The Petitioner dissatisfied with the decision of the Public Service Commission appealed to the Administrative Appeals Tribunal. The Petitioner submitted that the counsel who represented the Petitioner on his own initiative made an application to withdraw the appeal subject to preferring a further appeal in case of necessity. The order of the Administrative Appeals Tribunal dated 30.07.2008 marked P19 states as follows:

“Mr. Weddikkara, Counsel for the appellant submits that the appellant moves to withdraw this case without prejudice to his right of appeal to the relevant appellate authorities if he is aggrieved by an order or decision taken, subsequent to the conclusion of the disciplinary inquiry against him. The appeal is dismissed pro forma.”

The Petitioner in this application has sought a writ of certiorari to quash the decision of the Administrative Appeals Tribunal dated 30.07.2008 marked P19, on the basis that the decision of the Administrative Appeals Tribunal namely: “ that the PSC is perfectly correct and the Tribunal finds no reason to interfere with the decision of the PSC ” was erroneous. A careful perusal of the order of the Administrative Appeals Tribunal shows that the above observation is made by the tribunal to explain the appellant the options he has. The appellant in the given circumstances withdrew the appeal.

As the appeal made to the Administrative Appeals Tribunal was withdrawn the only order that was made by the said tribunal is to allow the withdrawal of the appeal and to pro forma dismiss the appeal. There is no basis on which this order could be quashed by a writ of certiorari. The Petitioner also has sought a writ of certiorari to quash the order of the 13th Respondent embodied in P12. The Petitioner has preferred an appeal against this order to the Public Service Commission exercising his statutory right provided by the Establishments Code. The Public Service Commission has taken cognisance of this appeal and had made an order. A judicial review will not be available to review a decision which has been subjected to review by a competent appellate body. The decision of the Public Service Commission cannot be subjected to judicial review as the Constitution of the Democratic Socialist Republic of Sri Lanka has ousted the jurisdiction of the Courts other than the Supreme Court in exercising the fundamental rights Jurisdiction. In the above circumstances the Petitioner is not entitle for any relief claimed in this application. The application of the Petitioner is dismissed without costs.