

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

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

CA (Writ) Application No.509/2011

Jayakody Arachchige Dhammika
Kumara Jayakody,
106/14, Outer Circular Road,
Ratnapura.

Petitioner

Vs.

1. Kamalini De Silva,
Secretary,
Ministry of Justice,
Superior Courts Complex,
Colombo 12.

Substituted 1st Respondent

2. Gayana Wijethunga
Assistant Secretary (Administration)

Ministry of Justice,
Superior Courts Complex,
Colombo 12.

3. Rauf Hakeem

Minister of Justice,
Superior Courts Complex,
Colombo 12.

4. The Human Rights Commission of
Sri Lanka,
No.108, Barnes Place,
Colombo 07.

Respondents

BEFORE : **S. SRISKANDARAJAH, J (P/CA)**

COUNSEL : Shantha Jayawardane with Duleeka Tmbuldeniya
for the Petitioner,
Janak de Silva DSG,
for the 1st 2nd and 3rd Respondents

Argued on : 09.11.2012

Decided on : 11.03.2013

S.Sriskandarajah, J,

The Petitioner, by a letter of appointment dated 5/10/2004, was appointed as a Temporary Inquirer into Sudden Deaths for the town limits of Ratnapura under Section 108 of the Code of Criminal Procedure Act No.15 of 1979 by the Secretary to the Ministry of Justice and Judicial Reforms. The Petitioner was thereafter appointed as an Additional Inquirer into Sudden Deaths for the town limits of Ratnapura with effect

from 1/11/2005 by the letter dated 24/10/2005 issued by the Secretary to the Ministry of Justice.

The Petitioner submitted that in relation to certain incidents that had taken place at the Ratnapura General Hospital, the Ratnapura Police came to his residence on 27/10/2010 and recorded a statement from him, informing him that the statement is recorded as a complaint was made to the Police Station against the Petitioner by Dr. P.B. Dissanayake, that the Petitioner had threatened to throw acid at him and kill him. The Petitioner also submitted that thereafter he was summoned to the Ministry of Justice on the 28/10/2010 and a statement was recorded from him by the 2nd Respondent. After his statement was recorded, he was given a letter, temporarily suspending his services as an Inquirer into Sudden Deaths, until the official inquiry into the complaint made by Dr. P.B. Dissanayake is concluded, and he was requested to hand over his official documents to the Magistrate of Ratnapura. It is the position of the Petitioner that at the time he was called for the inquiry at the Ministry of Justice on 28/10/2010, and at the time his statement was recorded by the 2nd Respondent, the Petitioner was unaware of any complaint made against him by Dr.P.B. Dissanayake other than the one which the Ratnapura Police told him. The Petitioner submits that the 2nd Respondent did not inform him of any allegation against him and he had only inquired about the incident on 25th October 2010 at the Ratnapura hospital. The Petitioner further submitted that by letter dated 3/03/2011, issued by the 1st Respondent, the Petitioner was informed that his services as an Inquirer into Sudden Deaths were terminated with immediate effect.

The Petitioner contended that he was neither served with a Charge Sheet nor was an inquiry held against him before his services were terminated. The Petitioner was not aware of the allegations made against him by Dr. P.B. Dissanayake. His complaint to the Human Rights Commission was turned down by the Human Rights Commission of Sri Lanka informing him that there was no violation of the Petitioner's fundamental rights and the Human Rights Commission has closed its file.

The Petitioner contended that in the above said circumstances, the termination of the Petitioner's services as an Inquirer into Sudden Deaths is illegal and against the rules of natural justice and against the principles of proportionality. The Petitioner claims that he is entitled to a Writ of Certiorari to quash the termination of his services as an Inquirer into Sudden Deaths, which is reflected in the document marked P19 dated 3/03/2011, issued by the Ministry of Justice.

The facts reveal that on 25/10/2010, Dr. P.B. Dissanayake had lodged a Police complaint stating that the Petitioner had, on that date, threatened to throw acid on him. The Police have conducted an investigation into this complaint and recorded a statement from U. Pushparani (Attendant), K. Nihal Wickremaratne (Attendant), M.L. Wijeratna (City Coroner), B.L. Sarath Wimalasiri (Retired), Dr. H.D.M. Sisira Kumara Dissanayake, Dr. P. Kamal Gamalal, L. Mallika (Retired), Dr. M. Atula Ratnasiri and the Petitioner. Considering the gravity of this incident, the 2nd Respondent conducted an investigation and the Petitioner was suspended pending the completion of the investigations. The Respondents also found that there were numerous complaints as to the conduct of the Petitioner in the performance of his duties. The learned Magistrate of Ratnapura, by his report dated 16th November 2009, informed the Ministry that the Petitioner was not suitable to function as an Additional Inquirer into Sudden Deaths. After considering all the statements recorded and the report submitted by the learned Magistrate, the 2nd Respondent recommended that the services of the Petitioner be terminated for the reasons stated by him in his report. After taking into account the said report submitted by the 2nd Respondent, Mr. Sugathe Ganlath, then Secretary of the Ministry of Justice, made recommendations to the 3rd Respondent, the Ministry of Justice, that the Petitioner was not suitable to function as an Additional Inquirer Into Sudden Deaths. Based on this report the Minister of Justice approved the termination of the services of the Petitioner.

The Petitioner is not holding a permanent post in the public service. As such, that there is no statutory requirement to serve any Charge Sheet and/or to hold a formal inquiry against the Petitioner, the Petitioner was not paid a salary, but he was paid only Rs.300/- (later amended to Rs.500/-) for every inquiry he conducted, in addition to payment of travelling expenses. In the above circumstances his services could have been terminated at any time by the Minister for reasons adduced. The Petitioner was informed of the complaint made against him by Dr. P.B. Dissanayake, and the Petitioner's conduct was also been observed and a report was called from the Magistrate of Ratnapura, and he too recommended that the Petitioner is not suitable to hold the said post. Under these circumstances the termination of the services of the Petitioner as an Inquirer into Sudden Deaths is justified. In the above circumstances the Petitioner's claim that he is entitled for a Writ of Certiorari to quash the decision to terminate his services has no basis and, therefore, this Court dismisses this Application without costs.

President of the Court of Appeal