

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

G. H. R. G. de Silva
Armitage Hill
Wakwella,
Galle.

PETITIONER

C.A 519/2009 (Writ)

Vs.

1. Tea Small Holdings Development Authority,
No. 70, Parliament Road,
Pelawatta, Battaramulla.
2. Noel Padmasiri Kariyawasam
The Chairman,
Tea Small Holdings Development Authority,
No. 70, Parliament Road,
Pelawatta, Battaramulla.

SUBSTITUTED-RESPONDENT

3. K. L. Gunaratne
4. Jerry Jayawardena
5. M. F. W. Stembo
6. Disna Dharmasekera
7. N. M. Vidhana Pathirana
8. H. D. Hemaratne
9. S. P. Gunathilleke

10. Bandara Gunasekera

11. Anoma Nandani

All of Tea Small Holdings Development
Authority, No. 70, Parliament Road,
Pelawatta, Battaramulla.

SUBSTITUTED-RESPONDENTS

BEFORE: Anil Gooneratne J. &
H. N. J. Perera J.

COUNSEL: Nimal Hippola for the Petitioner
Janaprith Fernando instructed by Anoma Gunatilleke
for Substituted-Respondents

ARGUED ON: 11.02.2013

DECIDED ON: 04.04.2013

GOONERATNE J.

A writ of Mandamus is sought by the Petitioner, an employee of the Respondent authority against the 1st Respondent authority and the 2nd to 11th Respondents (Director Board of the 1st Respondent) seeking certain monetary

benefits as prayed for in sub paragraphs (b) & (c) of the prayer to the Amended Petition.

The Petitioner joined the 1st Respondent authority in 1978 (P1). His service record is contained in document P2. In paragraphs 5 – 14 of the petition reference is made to a voluntary retirement scheme. His case presented to this court by learned counsel for the Petitioner was that by circular P3 which deals with the restructuring of the 1st Respondent authority a voluntary retirement scheme was introduced and the Petitioner applied by document P4, to be retired under the voluntary retirement scheme and thereby get the benefits in terms of circular P3. The 2nd Respondent by P5 accepted the Petitioner's application for a voluntary retirement scheme. In paragraph 14 of the Amended Petition of the Petitioner, he further pleads that a sum of Rs. 900,000/- is due from the said authority under the above scheme and had a legitimate expectation of receiving the said sum.

The learned counsel for Petitioner submitted to this court that to his clients surprise and dismay received letter P7, informing the Petitioner about some disciplinary action to be taken against him by the authority. Perusal of documents P7, P8, P9 & P10 it is apparent that an inquiry was held on the charges preferred against him. The inquiry commenced on 8.9.2005. However before the completion of the inquiry the Petitioner received letter P11 by the 2nd Respondent notifying the Petitioner that since he reached the age of 57 years on 13.6.2007 he is due to retire in the normal course. However the Petitioner had insisted that he should be retired under the voluntary retirement scheme and addressed letter P12. Anyway the Petitioner was retired from service from 13.6.2007 and his

request to be retired under the voluntary retirement scheme was turned down by the authorities concerned. (vide letter P13 & P14).

The inquiry conducted against the Petitioner was concluded and the disciplinary order (P15) was received where the Petitioner was found guilty of charges 1 – 4, and the Board of Directors decided to severely reprimand the Petitioner. The learned counsel for Petitioner contends that the Commissioner of Labour to whom the Petitioner complained has by the report of the Commissioner of Labour (P19), recommended certain benefits as contained in document P19 in favour of the Petitioner and thereby stress that his client is entitled to a Writ of Mandamus as prayed for in the amended petition filed before this court.

The learned Counsel on behalf of the Respondent whilst resisting the application for a Writ of Mandamus argues that granting of retiral benefits under the above scheme is in the discretion of the authority and also drew the attention of this court to documents R1 – R4 and more particularly to documents R5 & R7 where the Petitioner had requested that he be retired from service, and a reply to R6 that his request for voluntary retirement cannot be granted. It is also stated in R7 that the voluntary retirement scheme had lapsed by 2 years. It was also submitted that the General Manager of the 1st Respondent authority had offered the Petitioner an extended period of retirement but the Petitioner had by letters R8 & R9 refused such offer and insisted that he gets the benefit on document P3.

The main relief sought is the Writ of Mandamus as in sub paragraphs 'b' to 'e' of the prayer to the petition. The prerogative Writ of Mandamus is a

discretionary remedy of court. It cannot be issued as a matter of routine or course 1 CLW 306. This court has to be mindful of the consequences of issuance of a Writ of Mandamus at this stage, where all benefits accruing on the voluntary retirement scheme had lapsed after some time as in document P3. It cannot be kept open as same was introduced for a purpose i.e restructuring of the organization. Though not exactly on point the rationale to refuse if the consequences are disastrous was considered in the cases reported in 34 NLR 33 & 61 NLR 491.

Inasitamby Vs. Government Agent, Northern Province 34 NLR 33.

A candidate at an election to a Village Committee who has acquiesced in the method of voting adopted at the meeting is estopped from applying for a writ of mandamus on the ground that the procedure was irregular.

Where a candidate is proposed for election it is not necessary to record the number of votes cast against him.

A Court before issuing at writ of mandamus, is entitled to take into consideration the consequences which the issue of the writ will entail.

Per Sinnetamby J. in 61 NLR 491

At pgs. 496.497...

The prerogative writs are not issued as a matter of course and it is in the discretion of Court to refuse to grant it if the facts and circumstances are such as to warrant a refusal. A writ, for instance, will not issue where it would be vexatious or futile. In a case where an election to an office would not be affected by an irregularity in conducting the election the writ was refused in the case of Rex v. Ward. It was not suggested that the passage of the Motor Transport Act through the House of Representatives was effected by a bare majority of one vote and that if there were 95 members the result would have been different. It is appreciated that the petitioner asked for a writ on different grounds of a more fundamental character, viz, that there was no valid and lawful House of Representative in existence, but this circumstance is one of the matters a Court will take into consideration in exercising its discretion, The Court will also consider the probable consequences of granting the writ – vide 9 Halsbury P 81

(Hailsham ed.) and the cases referred to therein. In the present case the consequences of granting the writ can only be described as disastrous. It would result in all the legislation passed by Parliament since it came into existence and all its actions liable to be regarded as illegal and of no effect. It would affect the rights and liabilities of several thousands of people who conducted their business activities and their lives on the basis that legislation enacted by Parliament is valid; it would disturb the peace and quiet of the country; and, above all, it will bring the government of the country to a standstill. I take the view that in these circumstances even if the grounds on which the application is made are valid no Court would exercise its discretion in favour of the petitioner. I accordingly refuse the application.

To seek a Writ of Mandamus one must make out a legal right and a legal obligation. 1 NLR at 35. A person subject to a disciplinary inquiry as in paragraph B (1) would not qualify for any benefits under circular P3. Accordingly the Petitioner had been informed by letters marked R2 of 30.11.2004 and R4 of 30.3.2005. The funds for the retiral benefits under circular P3 was allocated by the Asian Development Bank. The Authority having intimated to the Petitioner of it's inability to grant benefits under circular P3 cannot be expected to reserve funds only for payment of the Petitioner who was subject to disciplinary inquiry. Position of the 1st Respondent authority is very clearly and precisely stated in letter P14. In view of the contents of documents R1 – R6 read along with paragraph B of circular P3, Petitioner cannot have any legitimate expectation to get any benefit in terms of circular P3. The basic requirements necessary for the

formation of a legitimate expectation are not in favour of the Petitioner in terms of circular P3.

In all the above circumstances we are not inclined to allow this application for a Writ of Mandamus.

Application dismissed without costs.

JUDGE OF THE COURT OF APPEAL

H .N. J. PERERA J.

I agree.

JUDGE OF THE COURT OF APPEAL