

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

In the matter of an Application for Writ in
the nature of Certiorari and Mandamus in
terms of Article 140 of the Constitution.

B.L. Kingsly Ranjit Pingho
No.272, Yasasiri Pura
Anuradhapura.

PETITIONER

CA (Writ) Application No.133/2012 VS.

1. The Deputy Inspector General of Police
of North Central Province
DIG Office
Anuradhapura.
2. The Inspector General of Police
Police Headquarters
Colombo 01.
3. Hon. Attorney General
Attorney General's Department
Colombo 12.

RESPONDENTS

BEFORE : **S. SRISKANDARAJAH, J (P/CA)**
COUNSEL : Nissanka Nanayakkara with Senjeewa Senevirathne,
for the Petitioner
Neil Unamboowa DSG,
for Respondents
Argued on : 17.05.2013

Decided on : 16.07.2013

S.Sriskandarajah,J

The Petitioner had joined the Police Department on 5th of August 1989 as a Reserve Sub Inspector and had served in different Police Stations, and the Petitioner had been subsequently absorbed to the Police Regular Service in the year 1995 as an Inspector of Police under the special absorption criteria. The Petitioner was interdicted on 29th May 2004 for misconduct while he was serving at Padaviya Police Station. The Petitioner and 3 others, viz., Police Sergeant Piyalal Handunneththi, Reserve Police Constable Priyantha Wasala and Reserve Police Constable Premasiri were charged in the Kesbewa Magistrates Court for committing rape on a woman under Section 364(a) of the Penal Code, as amended. When the case was pending before the Magistrates Court, a disciplinary inquiry was commenced against the Petitioner and the Petitioner was charge sheeted containing the following charges:-

- 1) Discreditable conduct;
- 2) Insubordination or oppressive conduct;
- 3) Falsehood or prevarication in regard to entering in an official document or book a false statement or placing their signatures;
- 4) Falsehood or prevarication in entering in the Day Book at page 110, stating that the officers visited the Police Post at Kumbukwewa;
- 5) Falsehood or prevarication in regard to making statement of false nature in order to mislead.

After an inquiry on to the charges stated above, the Petitioner and 3 other Police Officers were found guilty and, accordingly, in terms of the departmental order, the services of the said officers were terminated.

The Petitioner contended that the Petitioner was subsequently indicted in the High Court of Anuradhapura in terms of Section 364(2) of the Penal Code, as amended, and he was acquitted by a High Court order and, therefore, he has pleaded that his disciplinary order be reconsidered. The Respondent submitted that the disciplinary order was delivered on 29th April 2008 and the Petitioner has failed to appeal against that order as provided under the

procedure laid down for appeals against a disciplinary order. The departmental inquiry was held after giving the Petitioner an opportunity to defend himself, and the Petitioner was given ample opportunity to present his case before the Inquirer and, as the allegation made against the Petitioner was serious, and the charge against the Petitioner was proved and he was found guilty, that the Petitioner's services were terminated and, in those circumstances the Petitioner cannot claim that the said decision to terminate his services is ultra vires the powers of the Respondent or that the Respondents have not followed valid or proper procedure in coming to that conclusion. Even though the Petitioner had an opportunity to appeal against the said order to the proper authorities, the Petitioner has failed and neglected to do so. In these circumstances the Petitioner cannot seek a writ of certiorari in this Court to set aside the said order of termination of his service and, therefore, this Court dismisses this application without costs.

President of the Court of Appeal