

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

In the matter of an Application for mandates in
the nature of writs of Certiorari and Mandamus
under Article 140 of the Constitution of
Sri Lanka.

W.N.K. Gunawansa,
No.50/2, Aniyakanda Estate,
Nagoda, Kandana.
And presently of
No.664, North Circular Road,
London NW2 7QJ,
United Kingdom.

PETITIONER

C.A. Writ/685/2011

Vs.

1. Bank of Ceylon,
No.04, Bank of Ceylon Mawatha,
Colombo 01,
And 10 Others.

RESPONDENTS

BEFORE : S. SRISKANDARAJAH, J (P/CA)
W.M.M.MALINIE GUNARATNE,J

COUNSEL : J.C.Weliamuna with Sanjeewa Ranaweera
for the Petitioner.

A.H.M.D.Navaz DSG
for the Respondents,

Argued on : 26.07.2013

Decided on : 01.08.2013

S.Sriskandarajah,I

The Petitioner was an employee of the 1st Respondent, the Bank of Ceylon. The Petitioner submitted that on or about 3rd March 1986, she joined the Bank of Ceylon as an English Typist and, at the time material to this application, she was serving as a Secretary Assistant Grade III. She submits that after obtaining prior leave approval from the Bank of Ceylon on 16th March 2005, she left to the United Kingdom for a brief stay with her brother. The Petitioner was granted 19 days private leave from 16th March 2005 to 12th April 2005 and no-pay leave from 13th April 2005 to 11th July 2005. The Petitioner submitted that while she was in the United Kingdom, she fell ill and she got medical treatment and she was advised to rest and to refrain from long distance travelling. As such, she sought further leave from the Bank of Ceylon on medical grounds. The 10th Respondent, the Manager Operations of the Bank of Ceylon, by his letter dated 29/12/2005, informed her that as she had been absent from work for a continuous period of 3 months on medical grounds, she was requested to appear before a Medical Board to ascertain her suitability to continue in the service, and the Petitioner was asked to give a date and time for her to be present before the Medical Board in Sri Lanka. By letter dated 12th April 2006, the Petitioner informed the Bank her difficulty to travel and requested a Medical Board in the United Kingdom. The 10th Respondent, by letter dated 21/08/2006, informed the Petitioner the inability of the Bank to set up a Medical Board in the United Kingdom and requested the Petitioner to report within 3 months from 21/08/2006. In the mean time the Petitioner, on 19/04/2006 submitted a medical certificate dated 12/04/2006 to the Bank of Ceylon through the High Commission of Sri Lanka in U.K. and sought an extension of her overseas leave. The Petitioner submitted that she received a notice of vacation of post dated 28/02/2007, stating that she has failed to report for duty from 31/05/2006 without submitting an explanation or a medical certificate and, in terms of Part 2, Section 25(1)(b) of the Disciplinary Code of the Bank of Ceylon, the Petitioner was deemed to have vacated her post with effect from 31/05/2006.

It is the submission of the Petitioner that the said decision is contrary to law and has submitted an appeal dated 18/03/2007. The 9th Respondent has rejected the said appeal and confirmed the notice of vacation of post by his letter dated 30/07/2007.

It is the submission of the Petitioner that the authority to decide an appeal is vested in the Deputy General Manager (Human Resources) of the Bank of Ceylon, and the decision to reject the Petitioner's appeal on document marked P15(b) has been taken by the management of the Bank of Ceylon and, hence, the Petitioner submitted that the decision contained in document marked P15(b) is ultra vires and has no force. In view of the above, the Petitioner is seeking a writ of certiorari to quash the decision made by the Respondent Bank to vacate her post from 31/05/2006 and the rejection of the appeal referred to in documents marked P13 and P15(b).

It appears, by letter dated 28th February 2007, the Petitioner was informed of her vacation of post as she has not submitted a valid medical certificate for her absence from 31/05/2006, and she was given an opportunity to appeal against the said decision. The Petitioner's contention is that the appeal has to be decided by the Deputy General Manager (Human Resources) as per Rule 25(4) of the Disciplinary Code of the Bank of Ceylon. This Rule states as follows:-

"The Deputy General Manager (Human Resources) shall make order allowing or rejecting such appeal and shall submit such order for the covering approval of the General Manager, whether an appeal is allowed, and the employee is reinstated. Such order shall specify whether the period during which the employee did not report for duty should be a period of no-pay or whether the employee should be paid his emoluments for such period and, if so, the emoluments of such employee should be paid."

The Petitioner, by her letter dated 18th March 2007, has made an appeal. The appeal was considered by the Personnel Manager (Human Resources) Management, Assistant General Manager (Personnel) and Deputy General Manager (Human Resources) Development and was

submitted to the General Manager, and the General Manager ratified the said decision, and the said decision on appeal reads as follows:-

“In the circumstances we recommend that the said notice of vacation of post served on Ms. Gunawansa be ratified with effect from 31/05/2006. The decision on the appeal and ratification of the General Manager dated 26/07/2007 was communicated to the Petitioner by letter dated 30th July 2007 by the Personnel Manager (Human Resources) Management, and the Petitioner was informed that the vacation of post notice served on the Petitioner by the Assistant General Manager, Pettah, on 28/02/2007, effective from 31/05/2006 is hereby confirmed.”

The Petitioner's position that the vacation of post notice was issued without any basis was not supported by the Petitioner, and the Petitioner has not submitted or shown sufficient cause to this Court that she had medical certificate to cover the relevant period. Further, the Petitioner submits that her appeal against the said vacation of post notice was not considered by the Deputy General Manager (Human Resources) Development is erroneous. By document marked R2 the Respondent has submitted the decision made by the Deputy General Manager (Human Resources) Development on the appeal made by the Petitioner on the vacation of post notice and, according to the Disciplinary Procedure Code of the Bank of Ceylon, the decision was taken by the correct authority and the appeal was decided in accordance with the provisions of the disciplinary procedure. Therefore, the vacation of post notice or the decision on appeal on the said vacation of post notice cannot be challenged by a writ of certiorari and, therefore, this Court dismisses this application without costs.

President of the Court of Appeal

W.M.M.Malinie Gunaratne,J

I agree,

Judge of the Court of Appeal