

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

H. A. K. Chandrapala  
146/1, Seruwila Road, Balummahara,  
Mudungoda.

**PETITIONER**

C. A 390/2013 (Writ)

Vs.

1. People's Bank  
No. 75, Sir Chittampalam A. Gardiner  
Mawatha, Colombo 2.
2. Gamini Sedara Senarath,  
Chairman,  
People's Bank  
No. 75, Sir Chittampalam A. Gardiner  
Mawatha, Colombo 2.

And 13 others

**RESPONDENTS**

**BEFORE:** Anil Gooneratne J. &  
Malinie Gunaratne J.

**COUNSEL:** Shantha Jayawardena for the Petitioner

**ARGUED ON:** 02.12.2013

**DECIDED ON:** 10.12.2013

**GOONERATNE J.**

Learned Counsel for Petitioner supported this application on 01.12.2013 seeking mainly a Writ of Prohibition, to prevent the Respondent considering document P11 as in sub paragraph 'a' (repeated twice) of the prayer to the petition, and by the petition filed of record the Petitioner had also sought an interim order from this court. The Petitioner joined the 1<sup>st</sup> Respondent Bank on or about 1981 as a Grade I – Security Guard (P1). The body of the petition indicates that he had been promoted at various stages and in the year 2004 promoted as Grade I – Security Inspector P4(a). However letter at P4(b) indicates that the post is changed to Security Inspector - Grade II. Why this is done in that way of change of Grade in 2008, is not explained in the petition. The Petitioner also state that he was an active member of the Ceylon Bank Employees Union and had been in the Executive Committee from 2002 – 2005. Petitioner became a General Council member of the union from the year 2005.

The Petitioner also refer to the several activities of the above union and the way the Petitioner got involved in these activities. Learned counsel also submitted to court that active participation in union activities resulted in displeasure of the Senior Management of the Bank. In the year 2012 the Petitioner had been transferred to the Gampaha Branch for the reason stated in paragraph 12 of the petition, which was challenged in the District Court. It was the case of the Petitioner that the District Court had initially granted certain relief but orders had been canvassed in the Civil Appellate High Court by the Defendants and the High Court suspended the orders made by the District Court. Thereafter Petitioner served the Gampaha branch of the People's Bank as pleaded in paragraph 15/16 of the petition where on the date mentioned therein resulted in some damage to the vehicles belonging to the Bank where he attempted to reverse his vehicle as described in the said paragraphs.

The Petitioner also state that the damaged vehicles were repaired by him as directed by the Regional Manager. He also made a statement (vide paragraphs 18/19). It was the submission of learned counsel for the Petitioner that a charge sheet was issued and a disciplinary order (P11) was made against him without a proper inquiry pertaining to the above incident stated above. Petitioner complains about the charge sheet and the Disciplinary Order P11 i.e no

inquiry held prior to issuing P11. It is pleaded in paragraph 30 of the petition that the disciplinary action against the petitioner is illegal, unreasonable and ultra vires, the provisions of the Disciplinary Code of the Bank and the People's Bank Act and void adintio inasmuch as:

- (a) The Petitioner was not afforded a hearing as expressly provided by Clause 24.1 of the Disciplinary Code;
- (b) The Petitioner has been found guilty of charges that were not contained in the charge sheet dated 12.08.2013 and which charges could not therefore even be addressed by the Petitioner in his letter of explanation;
- (c) The Respondents have not made a complaint to the police regarding any damage caused to Bank property by the Petitioner as required;
- (d) The Petitioner has been punished in violation of the rules of natural justice;
- (e) The punishment imposed on the Petitioner is against the rules of proportionality, is unreasonable and excessive;
- (f) The said Disciplinary Order and the purported disciplinary inquiry are tainted with malice;

The Petitioner has applied for an extension of service (P15) since he is due to reach the age of 57 years, and if the extension is not granted he would have to retire from service. Petitioner fears that in view of the alleged Disciplinary Order P11, which he claims to be illegal, should not be considered and the authorities be prohibited from considering P11 in assessing the Petitioner's application P15. A Writ of Prohibition is sought in prohibiting the Respondents from considering P11 regarding his application for extension of service (P15).

The granting of an extension of service in any organization has to be regulated according to the rules of the organization, state, statutory body etc. In doing so the employer or the authority concerned should be left alone to arrive at a reasonable valid decision. Extraneous matters cannot be considered. There is no valid decision as regards document P11. In other words P11 has not been challenged by the Petitioner in any court of competent jurisdiction other a statement in the petition to the effect that the Petitioner has appealed against the Disciplinary Order (P11). The outcome of the so called appeal is not known. Whether the hearing of the so called appeal is delayed deliberately is not a matter for this court to consider. In the absence of a valid decision on P11 (not sought in this application) this court should not exercise the Writ Jurisdiction by using its discretionary powers at a premature stage. In doing so endorsing Petitioner's application by way of Writ of Prohibition, this court would unnecessarily cause public/administrative inconvenience to the organization though that term too is incapable of precise definition. Prohibition could be issued in a case where there is going to be an invalid exercise of power or invalid action in the future, though similar rules apply as in certiorari.

The People's Bank (1<sup>st</sup> Respondent) could very well ignore P11 and still arrive at a decision regarding Petitioner's extension of service. It can either

grant or refuse an extension of service in the absence of P11. In the absence of a glaring illegality which court could consider, it would not be the role of this court to issue formal notice on the Respondents in anticipation of Petitioner's plea being rejected, for extension of service. As such we are not inclined to grant formal notice, in this application. However there cannot be a bar for the Petitioner to move a Court of competent jurisdiction in the future if the need arises.

We refuse, formal notice.

Application dismissed. No costs.

JUDGE OF THE COURT OF APPEAL

Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL