

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

In the matter of an application for a Writ of
Prohibition under and in terms of Article 140
of the Constitution.

1. Wilmot Abeynayaka
Senior Superintendent of Police
No. 260/1
Kerawalapitiya Road,
Wattala.

C.A. (Writ) Application No.674/2006

PETITIONERS

Vs

1. Inspector General Of Police
Police Headquarters
Colombo 01.
2. Asoka Wijetilaka
Deputy Inspector General of
Police, Criminal Investigations
Department, Colombo 01.
3. Sisira Mendis
Senior Superintendent of Police
Director, Criminal Investigations
Department, Colombo 01.

4. E.A.AL. Amarasekara
Senior Superintendent of Police
Director-Special Investigation Unit
Colombo 01.

RESPONDENTS

BEFORE : Deepali Wijesundera J.

COUNSEL : Faiz Musthapa P.C. with
Mrs. Faiza Markar for the
Petitioners.
Arjuna Obeysekara D.S.G. for
the Respondents.

ARGUED ON : 10th June, 2014.

DECIDED ON : 05th August, 2014

Deepali Wijesundera J.

The petitioner has joined the Police Department in 1973 and had been promoted as a Senior Superintendent of Police in June 2000 and served in Chilaw, Tangalle and in Mount Lavinia. While serving in Tangalle the Inspector General of Police who acted on an anonymous petition against the petitioner has ordered the Deputy Inspector General Southern Range to initiate an inquiry and submit a report. The Deputy

Inspector General Southern Range had recommended that the said petition be referred to the Special Investigations Unit for an Independent Inquiry. The allegations levelled against the petitioner were, while serving in Chilaw he had recruited as a cook a person known to him to the Police Department and posted him to a Police Station he was in charge of. The said person namely RPC 5290 Velu was transferred to Hambantota Police Division as a police cook soon after the petitioner was transferred to Tangalle. The said RPC although he should have worked as a cook in the police mess was not assigned any duties at Hambantota but worked as a cook at the private residence of the petitioners in Colombo. The salary and other emoluments of RPC Velu were paid by the Hambantota Police Station.

The SIU conducted an inquiry and at the conclusion Director SIU the 4th respondent had submitted his final report dated 04/11/2003 **(1R9)** to the IGP. The Senior DIG (Administration) recommended to the IGP that no action should be taken against the petitioner. This is marked as **P4**. The IGP having agreed with the DIG's recommendations decided to conclude the investigation against the petitioner.

The petitioner while serving in Mount Lavinia was transferred as Director Womens' Bureau and had filed a writ application to quash the

said transfer order dated 06/02/2006 in the Court of Appeal. Subsequently the IGP had acted on another anonymous petition against the petitioner received by him on the same issue and order a fresh inquiry to be held. The petitioner has filed this application seeking inter alia a writ of Prohibition restraining the respondents conducting a fresh inquiry.

The learned counsel for the petitioner stated that the petitioner has served over 32 years in the Police Department and had an unblemished record of service and that during his term of service there had been occasion where he had to deal with certain errant Police Officers for corrupt practices on their part and as a result they were ill-disposed towards him. The petitioner stated the anonymous petition dated 02/08/2002 marked **P3** sent by some police officers was inquired in to by the SIU and the petitioner's private residence in Colombo was kept-under surveillance in order to ascertain whether Velu was working there but no such evidence was found. The petitioner's counsel submitted that the 4th respondent did not find evidence to substantiate the charge that RPC Velu's signature was forged by PS Piyadasa. The statements of PC Karunaratne and IP Premadasa given for the inquiry revealed the presence of RPC Velu at Hambantota. The petitioner's counsel submitted that RPC Velu's immediate supervisors had not complained about him not reporting for work. On the report submitted by

the SIU the Senior DIG (Admin) submitted his report to the IGP stating that he does not recommend disciplinary action against the petitioner or any other officer (**P4**) and no action was taken against the petitioner or any other officer on the said allegations. The learned counsel submitted that the position of the petitioner that he has taken disciplinary action against certain errant officers and thereby incurred their wrath has to be accepted. The petitioner's counsel stated that after being transferred as Director Womens' Bureau he appealed to the 1st respondent to vary the transfer but since there was no response he filed a writ application CA Writ 478/2006 in the Court of Appeal to quash the said order. The counsel further submitted that the 1st respondent being agitated by the said writ application directed the 2nd and 3rd respondents to reopen and conduct a fresh inquiry in respect of the inquiry bearing No. ED/08/2052/3 which had been concluded two years ago where none of the officers were found guilty.

The learned counsel stated that the 1st respondent has maliciously ordered a fresh investigation into the same allegation based on another anonymous petition (**1R11**) after the petitioner obtained an interim order (**P6**) suspending the operation of the transfer order made by the 1st respondent.

The petitioner's counsel stating the principles of Administrative Law that an Authority has power to decide only once cited wade on Administrative Law 10th Edition;

"In the interpretation of statutory powers and duties there is a rule that, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires. But this gives a highly misleading view of the law where the power is a power to decide questions affecting legal rights. In those cases the courts are strongly inclined to hold that the decision, once validly made, is an irrevocable legal act and cannot be recalled or revised. The same arguments which require finally for the decisions of courts of law apply to the decisions of statutory tribunals, ministers and other authorities".

The petitioner stated the purported fresh inquiry into the same allegation is malicious and without jurisdiction. The counsel further submitted that conducting an investigation into the same allegation in respect of which the petitioner has already been exonerated was done with malicious intention of taking revenge from the petitioner for filing the writ application and is clearly tainted with malice, and holding a fresh investigation on the same material would deny the petitioner a fair trial

for which he is entitled to under article 13 (3) of the constitution. He cited the judgments in *W.K.C. Perera Vs Prof. Daya Edirisinghe and others (1995) 1 SLR 148* and *Kunanathan Vs University of Jaffna and others (2006) 1 ACR 16*.

The petitioner's counsel further submitted that there was no evidence to establish the said RPC Velu worked in the petitioner's private residence and that the petitioner is a public officer who has since retired from service as a DIG and as such the 1st respondent does not have jurisdiction to reopen or hold a fresh inquiry. The counsel stated that no inquiry was pending against the petitioner when he retired and Sec. 12 (1) of the Minutes of Pensions is inapplicable to the determination of the present application.

The learned DSG for the respondents submitted that at the conclusion of the inquiry by the SIU the 4th respondent recommended to the IGP that a charge sheet be issued to the petitioner for violating the relevant provisions of the Departmental rules and regulation and also to recover the money paid to RPC Velu from the petition (1R9). When the report was submitted to the IGP through the Senior DIG (Admin) having omitted the adverse recommendations made by the SIU recommended to the IGP that no action should be taken against the petitioner and the

IGP decided to conclude the investigation. The respondents submitted another petition marked **IR11** had been received by the IGP and was referred to the CID to conduct an inquiry. The CID in an interim report had stated the matter be referred to the Attorney General for legal advice.

The learned DSG for the respondents submitted that an inquiry was not held against the petitioner nor was the petitioner acquitted of the charges levelled against him but the matter ended with the decision of the IGP not to proceed beyond the investigation. He stated that in the absence of any acquittal or a final determination being made by the relevant disciplinary authority on the allegations made against the petitioner the action of the 1st respondent to initiate a fresh investigation is not illegal nor is it ultra vires of the powers of the IGP or contrary to the provisions of the Establishment Code thus a writ of Prohibition does not lie to prevent the investigation proceeding.

The 4th respondent's report on conclusion of the investigations **1R9** clearly states that the said RPC Velu was not found in the petitioner's Colombo residence which was kept under surveillance.

1R9 page 3;

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5290 කේ. මුත්තවේල නිලධාරියා යොදවා ගැනීම.

ඉහත චෝදනාවට අදාළව විමර්ශනය කිරීමේදී, පේ.පො.අ. විලී අබේනායක මහතාගේ අංක : 260/1, කෙරවලපිටිය පාර, වත්තල යන ස්ථානයේ පිහිටා ඇති ඔහුගේ පුද්ගලික නිවස අවට පුද්ගලික ඔත්තුකරුවන් දැනුවත් කර පරීක්ෂණ පවත්වා ඇති අතර, එම පරීක්ෂණයේදී දැනට මෙම නිවසේ පේ.පො.අ. වරයාගේ බිරිඳ සහ දරුවන් පදිංචිව සිටින බවට කරුණු අනාවරණය වී ඇත. එහෙත් පෙත්සමේ සඳහන් උ.පො.කො. 5290 කේ. මුත්තවේල යන අය එම නිවසේ සේවය කරන බවට කරුණු කිසිවක් අනාවරණය වී නොමැත .

The said RPC was not found to be working at the petitioner's private residence on the respondent's own findings it is abundantly clear that the 1st respondent has acted maliciously on an anonymous petition. There was no evidence to say RPC Velu's salary was taken by somebody else the inquiring officer if he had any doubts should have sent his signature to the EQD. The Senior DIG (Admin) on receipt of the

said inquiry report had recommended to the 1st respondent that no action should be taken against the petitioner or any other officer to which the IGP had agreed. A final conclusion was reached on this issue.

P4 states;

Director SIU has specially stated that there is no evidence to maintain a charge against SSP Willie Abeynayake for getting RPC 5290 Velu to work in his private residence. Furthermore the surveillance was also conducted at the residence of SSP Willie Abeynayake at Wattala, but received negative results.

As regards the charges suggested to be leveled against the other officers devolve on the main issue as to whether this RPC was deployed by Mr. Willie Abeynayake in his residence. Since this charge against this SSP cannot be maintained due to lack of material, the question arises whether the charges against the other officers could be sustained.

The report of the Director SIU reveals that,

(a) There are no evidence to substantiate the charges that the signature of this RPC had been forged by PS 1960 Piyasena.

(b) If orders issued has been construed as illegal it was up to the officers concerned to have not complied with them and to have brought to the attention of their superiors promptly or at least to put on records.

The verbal evidence of the witnesses were contradicting their own entries and records. This important issue had been overlooked.

(c) Statement of PC 14412 Karunaratne noted in page 22 reveals the presence of RPC Velu at Hambantota.

(d) Statement of IP Premadasa (page 23) too reveals the presence of this RPC Velu at Hambantota.

In my view it would be futile exercise to frame charge against the officers concerned without sufficient substance and materials to sustain these charges.

Two years after the conclusion of this inquiry the 1st respondent acting on another anonymous petitioner on the same issue tries to start a fresh inquiry which the petitioner alleges was prompted by his writ application. This indicates that the 1st respondent has acted maliciously and is trying to harass an officer who has retired after long years of

service to his country. As stated by his counsel the petitioner has an unblemished service record.

To reopen a file which has been closed and petitioner exonerated after two years is unreasonable and is contrary to the principles of natural justice.

For the afore stated reasons this court decides to grant the relief prayed for in prayer (a) of the petition. Petitioner's application for a writ of Prohibition is allowed.

JUDGE OF THE COURT OF APPEAL.