

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 a Writ of Certiorari under
article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Indeera Wickramasinghe
No. 03, Sarasavi Uyana
Katuwewa, Weeraketiya.

C.A. (Writ) Application No.348/2011

PETITIONER

Vs

1. Sri Lanka Bureau of Foreign
Employment
2. Kinsley Ranawake – The Chairman
3. Bhatiya Sumityarachchi
4. Taranga Nalin Gamlath
5. Mrs. P.A.K.P. De Silva
6. Mrs. M. Gamage
7. Mrs. N. Gunasekera
8. W.M. Seneviratne
9. A.Kusumsiri
10. H.D.P. Gamage
11. H.D.J. Wickramasinghe

12. Harischandra Batagoda

General Manager

13. G. Jinadasa – Inquiry Officer

All of

Sri Lanka Bureau of Foreign
Employment,

No.234, Denzil Kobbekaduwa Mw,
Koswatte, Battaramulla.

14. Commission to Investigate

Allegation of Bribery or Corruption.

36, Malalasekara Mawatha,
Colombo 07.

Respondents - Respondent

1. I. Anzar
2. Ashoka Alawaththa
3. E.M.S.B. Ekanayake
4. Susil Ranasinghe
5. L.A. Ranjith Nihal Perera
6. M.Z.M. Manzoor
7. P.B. Niyadandipola
8. A.R.B. Nihatdeen
9. M.P. Pathirana
10. Rohan Somawansa

All of

Sri Lanka Bureau of Foreign
Employment,

No.234, Denzil Kobbekaduwa Mw
Koswatte, Battaramulla.

Added-Respondents- Respondent

BEFORE : Deepali Wijesundera J.
COUNSEL : K.G. Jinasena for the Petitioner.
Anusha Samaranayake S.S.C.
for the 1st to 13th Respondents.
ARGUED ON : 25th June, 2014
DECIDED ON : 17th October, 2014

Deepali Wijesundera J.

The petitioner has filed this application seeking writs of Certiorari to quash his interdiction letter marked as **P8**, charge sheet served on him marked as **P9** and his letter of dismissal marked as **P13**.

The petitioner was employed by the Sri Lanka Bureau of Foreign Employment, a person from a Foreign Employment Agency who had come to obtain an extension of a license had alleged that the petitioner demanded a bribe from him. This had resulted in a complaint being made by the 1st respondent to the Commission to Investigate Allegations of Bribery or Corruption and a decoy was placed to entrap the petitioner by the 14th respondent. The petitioner had been

subsequently arrested and produced before the Magistrates Court and indicted in the High Court. The 1st respondent had conducted a disciplinary inquiry which resulted in the dismissal of the petitioner.

The petitioner seeks to challenge the interdiction which he had been notified by P8 dated 22/04/2009 on the basis that it had been signed and issued by the Acting Chairman who was not authorized to issue the said letter. He also seeks to challenge P9 and P13 on the basis that there has been no delegation of powers of the Board to appoint and to terminate employment as permitted under *Sec. 16 (2) (e) of the Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985*.

The petitioner submitted that in terms of Sec 11 (1) and (2) powers vested with the 1st respondent can be delegated and by P14 powers had been delegated to the 2nd respondent however in making the delegation no reference had been made to Sec. 11 of the Act the petitioner stated no absolute power had been delegation to the 2nd respondent chairman of the Bureau.

The petitioner stated that it is illegal and is in violation of Natural justice for the 2nd respondent to get involved in the disciplinary

proceedings as he had a direct involvement on the alleged bribery incident. The petitioner cited the judgment in ***Jinasena Vs University of Colombo and others 2005 3 SLR 9***. The facts of this case are different from the instant case where the council members have given evidence at the domestic inquiry. In the instant case none of the makers of P8, P9 and P13 were witnesses at the domestic inquiry.

Citing the judgments in ***Mercelin Perera Vs Sockalingam Chettiar 1947 NLR 265*** and ***Shardul Singh Vs State of MP 1986 (Vol 53) 193*** the petitioner's counsel stated that the 2nd respondent had issued charges against the petitioner without the approval of the Board of Directors therefore the issue VII and VIII raised by 2nd respondent should be answered in favour of the petitioner and went on to frame issues. The learned counsel has mistaken the instant application which is an application for a writ to a case in the District Court where the counsels frame issue and at the end of the trial the court answered each issue in favour of either party.

The petitioner's counsel in his submission has cited a number of judgments which are applicable to Labor Tribunal application and have no relevance to the instant case.

The learned counsel for the respondents stated that the decision contained in **P8**, **P9** and **P13** had been made under the powers of the Board of Directors of the 1st respondent in Sec. 16 (2) (e) of the Sri Lanka Bureau of Foreign Employment Act No. 21 of 1985 and that powers have been delegated to the 2nd respondent under Sec. 11 of the said act. The delegation is contained in documents **P14**, **2R3** and **2R6**.

The respondent further submitted that **P8** was issued while the 3rd respondent was functioning as Acting Chairman. The respondents stated that there was a valid delegation by the Board to the 2nd respondent before issuing **P13** dismissing the petitioner and it was forwarded to the Board of Directors and their approval was taken as shown in **2R7**.

Learned counsel for the respondents' submitted that the petitioner filed CA writ application 562/10 challenging **P8** and later withdraw the matter thereafter the instant case was filed in May 2011 which can be only described as belated, vexatious and futile.

The respondents stated that the petitioner when served with **P9** had only made a bare denial and at the disciplinary inquiry petitioner

elected not to give evidence. He was found guilty after the conclusion of the inquiry.

The petitioner seeks to challenge his interdiction (P8) dated 22/04/2009 on the basis that it had been issued by the Acting Chairman.

Sec. 11 of the Act status;

(1). The Board may delegate to the Chairman, a Director or an employee of the Bureau any of its powers and duties as may be necessary for the efficient administration of the affairs of the Bureau.

(2). Every person to whom any power or duty is delegated under subsection (1), shall exercise or perform such power or duty subject to the general or special directions of the Board.

The Board can delegate powers not only to the Chairman or a Director but also to an employee of the Bureau for necessary administration of the Bureau.

Sec. 16 status;

(1). The Bureau shall have power to do anything necessary for, or conducive or incidental to, the carrying out of its objects.

(2) Without prejudice to the generality of the powers conferred by subsection (1), the Bureau shall have power.

(2)(e) To appoint, terminate the employment of, remunerate and control, its officers, servants, and representatives and to direct and decide all matters connected with the administration of its affairs;

Sec. 12 (2) of the Act states that "If the Chairman of the Board of Directors is unavailable the Minister may appoint one of the Directors to act in his place". Therefore the petitioner can not say the Acting Chairman had no authority to sign a letter, under Sec. 12 (2) he has all the rights of the Chairman.

The petitioner's argument that **P13** his letter of dismissal was not put to the Board is not correct. Document **2R7** shows that the

petitioner's dismissal was put before the Board of Directors and approved by them on 24/03/2011.

For the afore stated reasons I decide that the petitioner's application is not a fit case to issue a writ of certiorari. Petition is dismissed with costs fixed as Rs. 25,000/=.

JUDGE OF THE COURT OF APPEAL.