

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

U.L.Karunawathie
No.291.Wakwella Road, Hapugala
Wakwella

Petitioner

C.A. (Writ) Application No.863/10

Vs.

1. People's Bank
No.75, Sir Chittampalam A
Gardiner Mawatha, Colombo 02.
2. W.Karunajeewa
The Chairman
People's Bank
No.75, Sir Chittampalam A
Gardiner Mawatha, Colombo 02.
3. N.Wasantha Kumara
General Manager (Acting)
People's Bank
No.75, Sir Chittampalam A
Gardiner Mawatha, Colombo 02.
4. Chief Manager (Human Resources)
People's Bank
No.75, Sir Chittampalam A
Gardiner Mawatha, Colombo 02.
5. K.H.L.Chandrasiri
Deputy General Manager
(Human Resources)
People's Bank
No.75, Sir Chittampalam A
Gardiner Mawatha, Colombo 02.

Respondents

BEFORE : **K.T.CHITRASIRI, J.**
L.T.B.DEHIDENIYA J.

COUNSEL : Y.L.Edward Goonethilake with W.A.N.Alwis and
Lahiru N. Silva for the Petitioner

Manoli Jinadasa with S.Senanayake and A.Wijsekera
for the 1st to 5th Respondents

ARGUED ON : 12.03.2015

**WRITTEN
SUBMISSIONS** : 06.09.2013 by the Petitioner
25.07.2013 by the 1st to 5th Respondents

DECIDED ON : 12. 05. 2015

CHITRASIRI, J.

This is an application seeking *inter alia* to have a writ of certiorari issued on the respondents directing them to quash the decision made by the 4th respondent by which the respondents withheld a part payment of the gratuity amounting to Rs. Three Hundred Thirty Seven Thousand Five Hundred (337,500/-) being paid to the petitioner. The said decision is found in the letter dated 26.03.2008, marked as P5 filed with the petition. The petitioner also has sought for a writ of mandamus compelling the respondents to pay her the said Rs.337,500/- alleged to have been a part of the retirement gratuity of the petitioner that had been retained by the respondents.

In paragraph 10 of the petition, the petitioner has averred that the 4th respondent has decided to retain Rs.337,500/- out of the gratuity payment due to

her without holding a preliminary or formal inquiry. She also has alleged that the respondents have not even followed the Rules of Procedure laid down in the People's Bank Code of Disciplinary Rules contained in the circular bearing No.326/2002, marked P6, when the 1st respondent Bank decided to withhold a part of her gratuity, having violated the rules of natural justice. Accordingly, she has prayed that a writ of certiorari be issued quashing the decision referred to in the letters marked P5 and P11 of the 4th respondent and also for a writ of mandamus directing the respondents to pay the unpaid sum of Rs.337,500/- that had been retained by the Bank out of her gratuity entitlement.

The fact that no formal inquiry was held before the decision to retain Rs.337,500/- was made, has not been disputed by the respondents. However, the respondents have stated that there had been an investigation of an incident in which the petitioner with two other employees of the Bank had alleged to have permitted withdrawal of funds that was kept as security for a particular facility given by the Bank. The fact that the monies so released have not yet being recovered was also not in dispute. Admittedly, the petitioner has given a statement in that preliminary investigation conducted by the Bank in connection with the unauthorized release of funds. The report dated 10.12.2007 that was filed upon completion of the aforesaid preliminary investigation is annexed with the objections filed by the respondents marked D3.

The position taken up by the respondent is that the dispute in this application comes within the terms of the contract of employment of the petitioner and therefore the dispute before this Court is not amenable to writ jurisdiction. They have also

taken up the position that the petitioner has not availed of the methods or avenues such as making an application to the Commissioner of Labour, for relief that were available to the petitioner for redress before filing this writ application. Accordingly, the respondents have contended that the petitioner, under those circumstances is not entitled to have the writs issued as prayed for. They also have alleged that there had been a considerable delay on the part of the petitioner in coming to Court.

Then the issue to be determined is whether there had been a violation of the rules of natural justice by not having a formal inquiry or at least by not following the methodology referred to in the aforesaid circular No.326/2002, marked P6, by the 1st respondent Bank. On numerous occasions, our courts have decided that the rules of natural justice are to be observed when there is a public duty cast upon the authorities concerned. This position of law had been accepted and implemented in the case of ***Weligama Multi-Purpose Co-operative Society Ltd. v. Chandradasa Daluwatta. [1984 (1) SLR 195]*** In that case a Bench of five Judges in the Supreme Court has held thus:

“Having regard to the constitution and functions of the respondent Bank, I hold that there is no public duty or statutory duty in this case to call the petitioner for this interview. As is well known, this Writ will not issue for private purposes. Staff Circular 186/82 (which adopts the Nihal Wiratunga Report on the Minister’s directions) is only a circular and not a regulation having statutory force.”

In the case of ***Chandradasa v. Wijeratne [1982 (1) SLR at 413]*** too it had been decided that:

“the order of dismissal of an employee was in the exercise of a private contractual right and hence no writ would lie.”

In the case of **Jayaweera v. Wijeratne, [1985 (2) SLR at 413]** it was held in the following manner:

“Where the relationship between the parties is purely contractual one of a commercial nature, neither certiorari nor mandamus will lie to remedy grievances arising from an alleged breach of contract or failure to observe the principles of natural justice even if one of the parties is a public authority.”

In the case of **Siva Kumar v. Director General of Samurdhi Authority of Sri Lanka and another, [2007 (1) SLR 96]** Chandra Ekanayake, J has held that:

“the object of the application is to compel the performance by the respondents of certain obligations out of a contract of employment which existed between the petitioner and the respondents. His claim is merely a dispute about a private right and as such a Writ of Mandamus does not lie. Such matters arising out as to the contracts of employment are solely matters within the purview of private law and not a matter for judicial review.”

In the case of **Gawarammana v. The Tea Research Board and others, [2003 (3) SLR 120]** Sripavan, J (as he then was) held:

“that the powers derived from contracts are matter of private law. The fact that one of the parties to the contract is a public authority is not relevant since the decision sought to be quashed by way of certiorari is itself was not made in the exercise of any statutory power.”

Basically, the complaint of the petitioner was that the 1st respondent Bank has violated the rules of natural justice since it had failed to hold a formal inquiry before

the decision was made to retain part of her gratuity. Payment of gratuity emanates from the contract of employment she had with the 1st respondent Bank. It is an agreement between two parties even though one of them namely the 1st respondent Bank is a public enterprise. In such a situation, the parties are to implement the terms of the contract of employment between the parties concerned. Accordingly, it is clear that no public duty is cast upon the respondent Bank in this instance.

As mentioned in the authorities referred to above, if no public duty exists at a given instance, then the courts do not invoke and exercise its writ jurisdiction. As mentioned hereinbefore in this judgment, respondent Bank had no public duty to perform towards the petitioner since the matter complained of comes within the contract of employment, the petitioner had with the Bank. Therefore, it is my opinion that the petitioner in this case is not entitled to have the writs of certiorari and mandamus issued, as sought in her petition.

Moreover, it is trite law that the courts do not inclined to issue writs when other remedial measures are in place for an aggrieved party to seek relief. In such a situation that party who is aggrieved by a decision made by the authorities should first exhaust those other measures available and then come to courts for redress.

The applicable law in such a situation had been discussed by Marsoof, J in the case of ***Ranaweera v. Mahaweli Authority of Sri Lanka and another. [2004 (2) SLR at 346]*** In that case it was held that the writ of mandamus would not be available when there is an effective alternative remedy.

Also in the case of ***Mahanayake v. Chairman Ceylon Petroleum Corporation and others [2005] 2 SLR at 193***, referring to the decision in ***Hendrick Appuhamy v. John Appuhamy 69 NLR at 32***, it was held that where a specific remedy is given by a Statute thereby deprives a person who insists upon remedy of any other form of remedy than that given by the Statute.

In this instance, the petitioner being an employee of the 1st respondent Bank could have sought relief from the Department of Labour or made an application under the Pension Fund Rules that were available to her in the administrative system of the 1st respondent Bank. No material is available to show that the petitioner has sought relief making use of those measures that were available to her. Failure of the petitioner to do so will stand in the way for her to obtain the writs as prayed for in her petition. Hence, it will become an additional reason for this Court not to grant the relief sought for in the petition.

For the aforesaid reasons, this application to issue writs is dismissed. No costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

L.T.B.DEHIDENIYA J.

I agree

JUDGE OF THE COURT OF APPEAL