

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

**In the matter of an Application for a mandate in the  
nature of *Writ of Certiorari, Mandamus and  
Prohibition* under article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka**

Lt. Col. R. D. Gamini Ranwala,  
No.404/A, Batuwatta,  
Ragama.

**PETITIONER**

**CA/WRIT/830/2008**

**Vs,**

1. Lt. Gen. Sarath Fonseka,  
Commander of the Sri Lanka Army,  
Army Headquarters,  
Colombo.
2. Lt. Gen. L.R. Illukkumbura,  
Army Headquarters,  
Colombo.
3. Cap. C.C. Weeraratne,  
Sri Lanka Volunteer Force Headquarters,  
Battaramulla.
4. Cap. P.A.S. Wijesinghe,  
Regimental Headquarters, Wijayaba Infantry  
Regiment, Boyagane, Kurunegala.
5. Maj. K.R.S.P.K. Kahagelle,  
Headquarters, 5<sup>th</sup> Battalion,  
Sri Lanka Light Infantry Army,  
Army Camp,  
Nikewewa, Welioya, Parakramapura.

6. (a) Lt. Gen. Chrishantha De Silva,  
Commander of the Sri Lanka Army,  
Army Headquarters,  
Colombo.

**RESPONDENTS**

**Before: Vijith K. Malalgoda PC J (P/CA) &  
H.C.J. Madawala J**

**Counsel:** J.C Weliamuna with Pasindu Silva and Lakmini Silva for the Petitioner  
Arjuna Obeysekera DSG and Chaya Sri Nammuni SC for Respondents

Argued on: 09.10.2015

Written Submissions on: 18.12.2015

**Order on: 24.03.2016**

**Order**

**Vijith K. Malalgoda PC J**

Petitioner to the present application Lt. Col. R.D. Gamini Ranwala had come before this court seeking inter alia,

- b) Grant and issue a *Writ of Certiorari* quashing the decisions reflected in P-10 insofar as it is applicable to Petitioner
- c) Grant and issue a *Writ of Certiorari* quashing the decisions of the 1<sup>st</sup> Respondent to withdraw the commission of the Petitioner and discharge the Petitioner from Sri Lanka Army thereof
- d) Grant and issue a *Writ of Certiorari* quashing the proceedings and the findings of the said Court of Inquiry

- e) Grant and issue a *Writ of Mandamus* directing the 1<sup>st</sup> Respondent to recommend the promotions due to him according to law thereof
- f) Grant and issue a *Writ of Prohibition* prohibiting the 1<sup>st</sup> Respondent and/or any other Respondent thereof from taking any steps and/or causing any steps to be taken thereof against or prejudicial in any manner to the interest of the Petitioner based on the said purported report of Court of Inquiry Board or the said 1<sup>st</sup> Respondent's decision as reflected in P-10.
- g) Grant and issue a *Writ of Prohibition* prohibiting the 1<sup>st</sup> Respondent and/or any other Respondent thereof from taking any steps and/or causing any steps to be taken thereof to withhold the pension entitlement of the Petitioner in the event of the Petitioner retiring from the Sri Lanka Army thereof

When this matter was supported before this court on 08.12.2008 Respondents undertook not to forward the recommendation of the 1<sup>st</sup> Respondent to the President until the conclusion of these proceedings.

The Petitioner who was enlisted to the Cadet Corps of the Sri Lanka Army (volunteers) on 20.04.1980 and was commissioned to the rank of 2<sup>nd</sup> Lieutenant in 1983. Since then he was given promotions in the Army, and at the time the impugned conclusion was arrived by the 1<sup>st</sup> Respondent he was holding the rank of Temporary Lieutenant Colonel.

The Petitioner's position before this court was that until he received a notice along with a complaint (dated 14.10.2003) from the Human Rights Commission, he was unaware of any incident between him and a soldier by the name of Samantha Ranasinghe, but in fact he had considered a Redress of Grievance of the said Soldier which was submitted to him through the 5<sup>th</sup> Respondent and consequently he had granted approval to the same.

Consequent to the said complaint from the wife of the said Soldier Samantha Ranasinghe to the Human Rights Commission, initial investigation was conducted by the Sri Lanka Military Police and Petitioner too had given a statement in the said investigation.

In June 2006 a Court of Inquiry (here in after referred to as COI) consist of 2<sup>nd</sup> to 4<sup>th</sup> Respondents was appointed to look in to the said allegation.

The complaint of the petitioner before this court is twofold. Firstly the Petitioner alleges that the COI was biased towards him. Secondly he took up the position that the 1<sup>st</sup> Respondent does not have the power to recommend that the Petitioner be called upon to resign his commission.

Before looking in to the said complaint, this court intends to consider the COI conducted to look in to the allegations as referred to above.

The proceedings of the said COI are before us produced marked R-1 by the Respondent. When perusing R-1 this court observed that the purpose of the said COI is to “කැඳවීම් නියෝග මුද්‍රාවිවිච්ඡි ල.යු.පො.සේ.බ වෙත භාරවූ සෙ/5 ඩී 01283 සා.සෙ සමන්ත රණසිංහ පී.එස් (5 ශ්‍රී ල.පා.හ) යන. සෙ නි හට සිදුවී ඇති අක්‍රමිකතා සබැඳිව සොයා බැලීම.”

It is further observed by this court that at the said COI several witnesses were summoned, sometimes they were confronted with other witnesses to obtain clarifications, witnesses were permitted to question other witnesses but there was no accused person or a person who was accused of or charge sheeted before the COI during proceedings of the COI. This position is further confirmed when going through the findings of the said COI. In the said finding COI has made several findings with regard to soldier Samantha Ranasinghe and also made recommendation with regard to his future in the Sri Lanka Army.

As observed by us there are several other findings in the said COI as against the Petitioner and also against the 5<sup>th</sup> Respondent as well. In conclusion the COI has made several specific findings which appear in paragraph 31-38 of the findings to the COI.

As against the Petitioner the COI has reached the following specific findings.

37 the petitioner has served too long in the same unit and therefore he should be transferred out from his unit

38 to take disciplinary action against the Petitioner considering the findings at paragraphs 24, 27, 28, 29 and 30

It was admitted by both parties that no disciplinary action was held under the terms of the Army Act as recommended by COI but instead the 1<sup>st</sup> Respondent had decided to withdraw the commission of the Petitioner as evinced in the impugned document marked P-10.

In this regard the Petitioner has argued that the COI had been introduced by Army Court of Inquiry Regulation 1952 which mainly proceeds with the terms of reference issued with regard to the allegation against the officer/officers concerned, but COI has no jurisdiction to charge or punish a person subject to Military Law since there is no charge and a accused person before the COI.

Based on the above argument the Learned Counsel for the Petitioner submitted that P-10 contemplates a punishment without following the proper procedure identified in the Army Act,

Regulation 2 of the Army Courts of Inquiry Regulations 1952 reads thus,

“Court of Inquiry means an assembly of officers, or, of one or more officers together with one or more warrant or non- commissioned officers, directed to collect and record evidence and, if so required, to report or make a decision with regard to any matter or thing which may be referred to them for inquiry under this regulation

Regulation 162 of the said regulation reads thus,

“Every Court of Inquiry shall record the evidence given before it, and at the end of the proceedings it shall record its findings inspect of the matter or matters into which it has assembled to inquire as required by the convening authority”

Section 40 of the Army Act identifies the available cause of action when a person subject to the Military Law is accused of an offence and taken into custody,

- (I) Take steps for the trial of that person by a Court Martial
- (II) Where the person is an officer of a rank below that of Lieutenant-Colonel or is a warrant officer, refer the case to be dealt with summarily by the Commander of the Army or by such officer not below the rank of Colonel as may thereto be authorized by the Commander of the Army
- (III) Where that person is a soldier other than a warrant officer, deal with the case summarily.

Based on the above provision taken together with the provisions in section 42/45 read with section 133 the Petitioner submitted that a person subject to the Military Law could only be punished consequent to a Summary Trial or Court Martial.

In the case of *Boniface Perera V. Lt.General Sarath Fonseka and Others CA/Writ Application 705/2007 (CA minutes dated 10.09.2009)* Anil Goonaratne J concluded,

“This court having considered the case of either party is of the view that proceeding before a Court of Inquiry in terms of the Army Act is a preliminary step prior to a proper trial, which is more or less a fact finding inquiry to collect and record evidence and to submit a report. On receipt of such Court of Inquiry proceedings or report, the Commander of the Army could

decide whether to initiate formal disciplinary proceedings by a Court Martial or Summary Trial in terms of provisions of the Army Act. Court of Inquiry proceeds on the basis of terms of reference issued regarding the allegation against the officer concerned. There are no formal charges framed. Therefore based on the Court of Inquiry proceedings it would not be within the purview of the 1<sup>st</sup> respondent to impose any punishment as in the case in hand. It is essential that the person concerned should be tried on formal charges and no punishment could be imposed prior to framing formal charges at a legally constituted Court Martial or Summary Trial. As such any decision to punish based on the Court of Inquiry proceedings would be illegal and ultra virus the provisions of Army Act.”

In the case of *Weerasinghe V. Lt.General Sarath Fonseka and Others CA/Writ Application 2148/2005* (CA minutes dated 23.07.2007) the Petitioner has contended that after a Court of Inquiry the Commander of the Army has directed disciplinary proceedings by way of summary trial but before the conclusion of the summary trial and without knowing the outcome of the said summary trial Commander of the Army has directed that an amount of Rs. 706, 963/- be recovered from him and action be initiated to recommend the withdrawal the commission.

In the said circumstance Sri Skandarajah J held that “for the reasons this court issue a *Writ of Certiorari* to quash the decision of the Commander in so far as it relates to the recovery of Rs. 706,963/- from the Petitioner and the take action to recommend the withdrawal of the commission of the Petitioner and to discharge him from the Army.

However in contrary to the said argument, whilst referring to the findings of Jayasinghe (J) in the case of *Air Vice Marshall Elmo Perera V. Liyanage and others 2003 (1) Sri LR 331* the Learned Deputy Solicitor General argued that, under the provisions of section 10 of the Army Act, “Every Officer shall hold his appointment during the Presidents pleasure” and therefore President is not obliged to institute

a fact finding inquiry because it was open to the President to terminate the services of the Petitioner on the basis that the Petitioner holds office at the pleasure of the President.”

It was further argued by the Learned Deputy Solicitor General, that the Petitioner being an officer in the Volunteer Force, is bound under the provisions of Sri Lanka Army (Volunteer Force and Volunteer Reserve) Regulations to the effect that,

“An officer of the Volunteer Force may, at any time during his service be called upon to resign his commission for reasons, which in the opinion of the President, warrant such action.”

This court whilst confirming the powers vested with the President under the Army Act and the Volunteer Reserve Regulation is of the opinion, that the facts and circumstances of the case in hand does not refer to powers of the President, since the impugned document P-10 is only a decision of the 1<sup>st</sup> Respondent. Even though the Respondents have argued that P-10 is only a recommendation and not a decision and therefore there is no decision to quash, I cannot agree with the Learned Counsel’s contention since P-10 carries a decision of the 1<sup>st</sup> Respondent to recommend the President to withdraw the commission of the petitioner.

During the argument before this court Learned Deputy Solicitor General further relied on the following observation by the Court of Appeal in the case of *Hulangamuwa V. Balthazar 1984 (II) Sri LR 29* to the effect;

“A consideration of these regulations in particular the procedure prescribed there in and the duties and functions of the Court of Inquiry, reveals that it possesses all the attributes of a judicial tribunal. It bears a judicial character. In my view a Court of Inquiry is a tribunal that is sanctioned and recognized by law and is clothed with all the attributes and incidents of a Court of Justice. It is one which exercises jurisdiction over persons subject to the Military Law.”

However it is observed by this court that the circumstances, under which the Court of Appeal made the said observation, cannot be considered in the present case. In the said case, the decision of the Army Commander based on the findings of a COI was challenged in the District Court by way an action for damages. In the said circumstance Court of Appeal held;

“The complaint (P9) is one which could have lawfully been made to and entertained by the Commander of the Army. The Court of Inquiry assembled by the Army Commander is one which exercises jurisdiction over persons subject to military law. The complaint (P9) is one made by one military officer against another military officer regarding a matter of military discipline. It relates to a matter which falls within the exclusive cognizance of a military tribunal. A Civil Court is not competent to inquire into the truth or falsity of such a complaint and no action in tort can be based there of in a Civil Court. The present action is misconceived and cannot be maintained in law.”

When considering the material discussed above, this court is of the view that the decision contained in P-10 is illegal and no valid decision in law. Therefore this court decides to issue a Writ of Certiorari to quash the decision contained in P-10 as prayed in paragraphs (b) and (c) of the prayer to the petition.

Petitioner has further argued that the said COI was biased against him. Even though the petitioner has submitted that, he was unaware of the complaint made by the wife of the Soldier Samantha Ranasinghe until it was referred to him, the proceedings of the COI which is before us clearly indicates the circumstances under which the said complaint was made at the Human Rights Commission. At one instance, when the Petitioner complaint to the COI that he was not given an opportunity to cross examine the witness, the COI has given an opportunity to the Petitioner to cross examine witnesses. Therefore this court cannot agree with the Petitioner with regard to his argument.

It is further observed by this court that the Petitioner has failed to establish that he has a legal right to be promoted and the Respondents are under a legal duty to grant the promotions to him.

As observed by this court it is only under section 42/45 read with section 133 of the Army Act, that a person subject to the military law could only be punished consequent to a Summary Trial or Court Martial. When the findings of the COI with a recommendation for disciplinary action are submits before the Commander of the Army he has to take a decision under the provisions of the Army Act. Therefore this court is not inclined to make any order directing the Commander, not to follow the proper procedure laid down in the Army Act.

For the reasons setout above this court is not inclined to grant relief as prayed in paragraph (d) - (g) of the prayer to the Petition.

Under these circumstances this court makes order issuing a *Writ of Certiorari* as prayed is paragraphs (b) and (c) to the Petition.

Court is not inclined to issue a *Writ of Certiorari, Mandamus and Prohibition* as prayed in paragraphs (d) - (g) to the Petition.

Application is partly allowed.

**PRESIDENT OF THE COURT OF APPEAL**

**H.C.J. Madawala J**

I agree,

**JUDGE OF THE COURT OF APPEAL**