IN THE COURT OF APPEAL OF THE DEMOCRAIC SOCIALIST REPUBLIC OF SRI LANKA.

Court of Appeal No. CA (PHC) 136/2006

High Court Anuradhapura No. 08/2001/Writ

Dingiribanda Ranathunga,
Alapath Wewa Road,
Palugaswewa.

Petitioner-Appellant

v.

1.Co-operative Employees Commission,
North Central Province,
No. 352, Maithreepala Senanayake
Mawatha, Anuradhapura.

2. Secretry,
Co-operative Employees Commission,
North Central Province,
No. 352, Maithreepala Senanayake
Mawatha, Anuradhapura.

3.Maradnkadawala Multi purpose
Co-operative Society Ltd,
Maradankadawala.

And others

Respondents-Respondents

Before : Malinee Gunarathne J.

L.T.B. Dehideniya J.

Counsel : Mahinda Nanayakkara for the Petitioner Appellant.

C.Paranagamage instructed by Namasena Gamage for the 3rd 9th 11 to 16th Respondents

Argued on : 25.01.2016

Decided on : 12.05.2016

L.T.B. Dehideniya J.

This is an appeal from the judgment of the Learned High Court Judge of Anuradhapura. The petitioner was the accountant of the 3rd Respondent Society and his services has been terminated after an inquiry. Being dissatisfied with the decision of the said inquiry, the Petitioner appealed to the 1st Respondent. After several days of inquiry, the 1st Respondent delivered the order dated 13.05.1998 acquitting the Petitioner and ordered the 3rd Respondent to reinstate the Petitioner from 01.06.1998, but the 3rd Respondent did not implement the order. Thereafter, the Petitioner negotiated with the Respondents for redress but being unsuccessful, instituted action in the High Court of Anuradhapura seeking for mandate in the nature of writ of mandamus against the 3rd to 10th Respondents to implement said order of the 1st Respondent and a writ of mandamus against 1st and 2nd Respondents to take legal action to implement the said order. The Learned High Court Judge dismissed the application on two grounds i.e. on undue delay of instituting the action and on the irregularity in the jurat of the affidavit. Being aggrieved by the said judgment, this appeal is preferred to this Court.

The affidavit filed in the High Court is in Sinhala language. In the jurat it says that the Petitioner has affirmed to the correctness of the facts stated

in the affidavit instead of stating that he affirmed to the truth of the facts stated in it. The affidavit is a form of evidence tendered to Court. The deponent has an obligation to make solemn and formal declaration. In the opening part of the affidavit he declared that he "as a Buddhist, solemnly truly and sincerely declare and affirm" has shown that he intended to tell the truth and before the Justice of Peace he affirmed to the correctness of the facts stated in the affidavit.

Mohamed V. Jayaratne and others [2002] 3 Sri L R 181 is a case where the opening part of the affidavit stated that "solemnly, sincerely and truly declare and affirm as follows." and the jurat of the affidavit read that "the deponent having understood the contents thereof sworn to". It has been held that;

> "In the instant case the words used by the petitioner in the opening part of his affidavit manifest his intention to make a solemn and formal declaration. The words used show his consciousness of his fundamental obligation to tell the truth. It was our considered view that the use of the word affirm in the opening part of the affidavit and the word swear in the jurat cannot militate against the manifested intention of the petitioner to make a formal declaration in the discharge of his fundamental obligation to tell the truth".

In the instant case also the deponent, the Petitioner, showed his fundamental obligation to make a formal declaration and his consciousness to tell truth. He has affirmed that the facts in the affidavit are correct. Accordingly, I hold that the affidavit of the Petitioner is a valid affidavit.

The impugned order of the 1st Respondent is dated 13.05.1998 and it was communicated on 21.05.1998. The application was filed in the High

Court for a writ of mandamus on 20.03.2001. The Learned High Court Judge considered this as a delay. The Counsel for the Petitioner brought to our notice that the petitioner has negotiated with the 1st Respondent to get the order implemented until the last communication of the 1st Respondent dated 16.01.2001 marked P27, where the Petitioner was informed that the 1st Respondent is unable to reconsider the decision dated 13.05.1998 and was advised to take legal action. The counsel submits that the Petitioner instituted the action within three months and there is no delay.

The impugned order was to reinstate the Petitioner from 01.06.1998, was not implemented by the 3rd Respondent. The Petitioner, on 03.06.1998 informed the 3rd Respondent with a copy to the 1st Respondent by letter marked P14 that he was not called for duty as per the order of the 1st Respondent and requested to reinstate him. The 3rd Respondent by letter dated 12.06.1998, marked P15, informed the 1st Respondent with a copy to the Petitioner that the Board of Directors of the 3rd Respondent has decided to suspend the implementation of the order of the 1st Respondent. The Petitioner knew from the date of letter P14, i.e. from 12.06.1998 that the 3rd Respondent is not going to implement the impugned order. The Petitioner instituted this action more than one and half years after coming to know that the order will not be implemented by the 3rd Respondent.

Writ is a discretionary remedy and it is well settled principle that a person seeking for a discretionary remedy shall come to Court expeditiously. It was held in Sarath Hulangamuwa v. Siriwardene [1986] 1 Sri L R 275 that 10 months delay is unreasonable. In the case of Wijegoonewardene V. Kularatne - 51 NLR 453 held that unreasonable delay in making the application in the absence of lawful excuse for the delay, the application should be refused.

In the instant case the Petitioner, being an accountant, knowingly that the decision will not implemented by the 3rd Respondent, without seeking for a remedy in Court, kept on writing to the 1st Respondent for relief. It is an unreasonable and unacceptable delay. My view is that it warrants the dismissal of the application.

Accordingly I see no reason to interfere with the finding of the Learned High Court Judge.

Appeal is dismissed without cost.

Judge of the Court of Appeal

Malinee Gunarathne J.

I agree.

Judge of the Court of Appeal