

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

Biyanwillage Don Rohan Lalith Perera
No.7F-32,
National Housing Complex,
Raddolugalna.

Petitioner

CA(WRIT)320/2016

-Vs-

1. National Gem and Jewellery
Authority,
No.25, Gall Face 'TelTace,
Colombo-03.

2. Asanga Welagedara,
Chairman/ Chief Executive Officer,
National Gem and Jewellery
Authority,
No.25, Gall Face Ten-ace,
Colombo-03.

Respondents

CA Writ 320/2016

Before : Vijith K. Malalgoda, PC, J (P/CA) &
P. Padman Surasena, J.

Counsel : Vinodh Wicramasooriya, AAL with Champika Rodrigo, AAL for the Petitioner.
S. Balapatabendi, DSG for the State.

Supported &

Decided on : 28.09.2016

Vijith K. Malalgoda, PC, J (P/CA)

Heard learned Counsel for the petitioner and learned Deputy Solicitor General representing respondent authority. The petitioner complains before this Court and submits a decision conveyed to him by document P7. According to P7 the 1st respondent authority has terminated the services of the petitioner with effect from 29.09.2016 after giving one month notice. As reveal before this Court petitioner who is appointed as Director (export services and marketing) is still on probation in the 1st respondent authority. He first joined the 1st respondent authority as a consultant for a period of six months and while he was in service he has applied for an internal post of director export services and export marketing and he was selected after an interview. However, it was revealed thereafter that the petitioner was not having the basic qualification to be employed in the said post since he was not having a basic Degree. This issue was raised by the Auditor General in his report and based on this the 1st respondent authority has considered this issue. We observe that the termination of the petitioner was purely contractual since he had a service contract with the employer 1st respondent authority and during his probation period the employer has terminated his

service. Therefore it is our considered view that this decision is taken purely on the service contract between the employer and employee. The petitioner's position before this Court is that the respondent being a State agency there is a statutory flavor in to the decision taken by the 1st respondent authority. However, this matter had been looked into in several decisions by this Court and the learned Deputy Solicitor General submits before us a recent unreported decision of 183/2010 where H/L Justice Chitrasiri has clearly discussed this issue and decided that the contractual obligation between State agency and an employee does not come under the writ jurisdiction. In this regard we are also mindful of the famous case of Gawarammana vs. Tea Board where H/L Justice Sripavan had held that the powers derived from the contract are matters 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.

Having considered the above decision and the material I have already discussed we see no merit in this application before us and therefore we are not inclined to issue notice.

Notice refused.

No cost is ordered.

PRESIDENT OF THE COURT OF APPEAL

P. Padman Surasena, J.

I agree.

JUDGE OF THE COURT OF APPEAL

NR/-