

**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 Writs of  
Certiorari and Mandamus in terms of  
Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.*

C A (Writ) Application

No. 447 / 2015

Pathiranage Mihipathi Madhuranga,

16/ 6,

Uswatte Road,

Nathuduwa,

Kelaniya.

**PETITIONER**

-Vs-

1. National Savings Bank,  
"Savings House",  
No. 255,  
Galle Road,  
Colombo 03.
2. Aswin De Silva,  
Chairman,
3. K M M Siriwardene,  
Director General,  
Department of Fiscal Policy,
4. Ajith Pathirana,  
Director,
5. Bradley Emerson,  
Director,
6. Suranga Naullage,  
Director,
7. D L P R Abeyaratne,  
Postmaster General (ex-officio Director),
8. Wasantha Batagoda,  
Director,
9. H.M. Hennayake Bandara,  
General Manager,
10. Manager (Human Resources  
Development),

2<sup>nd</sup> - 10<sup>th</sup> Respondents,  
all of National Savings Bank,  
"Savings House",  
N o. 255,  
Galle Road,  
Colombo 03.

**RESPONDENTS**

**Before: Vijith K. Malalgoda PC J (P/CA)**

**P. Padman Surasena J**

Counsel : Sanjeewa Ranaweera for the Petitioner.

Nayomi Kahawita, Senior State Counsel for  
Respondents.

Decided on : 2016 - 11 - 29

ORDER**P Padman Surasena J**

The complaint made by the Petitioner to this Court , inter alia, that the Respondents have by the decision/ determination made by the 10<sup>th</sup> Respondent above named had deprived the Petitioner of his salary/ wages/ emoluments during the period of his interdiction/ suspension.

It is the position of the Petitioner that, whilst he was serving as the 'Second Officer' of the Ragama branch of the 1<sup>st</sup> Respondent namely the National Savings Bank, the 10<sup>th</sup> Respondent, by his letter dated 2013-02-18 produced marked **P 2**, interdicted/ suspended the Petitioner without a pending formal disciplinary inquiry into certain alleged fraudulent transactions which he is alleged to have been involved when serving at Ragama branch.

The Petitioner has sought to argue that in terms of clause 6.4 of the Disciplinary Rules of the 1<sup>st</sup> Respondent, it is not the 10<sup>th</sup> Respondent who has authority/power to deprive the Petitioner of his wages/salary/emoluments during the period of his interdiction/suspension.

Petitioner has sought from this Court inter alia,

- (a) a Writ of Certiorari to quash the decision/ determination made by the 10<sup>th</sup> Respondent (reflected / contained in the document marked **P 2**) depriving the Petitioner of his salary / wages / emoluments during the period of his interdiction / suspension;
- (b) a Writ of Mandamus to compel the 1<sup>st</sup> Respondent and/ or any other Respondent/s and/ or any other authority to pay the Petitioner's salary/ wages/ emoluments which have been denied to him by the 10<sup>th</sup> Respondent's decision / determination reflected/ contained in **P 2**.
- (c) In the alternative to (b) and (c) above, a Writ of Mandamus to compel the 1<sup>st</sup> Respondent and / or any other Respondent/s and/ or any other authority to pay one-half of the Petitioner's salary/ wages/ emoluments for the period commencing from 2013-08-16 until the final conclusion of the formal disciplinary inquiry conducted against the Petitioner;

This Court had decided to issue notices on the Respondent upon the Petitioner supporting this case for notices on 2015-11-20. Thereafter when this case was mentioned in this Court on 2016-09-01, 2016-09-03, 2016-09-19 and 2016-09-28 Respondents have taken up the position that the service of the Petitioner has now been terminated upon the findings of the disciplinary inquiry held against the Petitioner. The Respondents thereafter has filed the letter of dismissal dated 2016-08-02 addressed to the Petitioner. The Respondents in that letter, had informed the Petitioner,

- i. that he has been found guilty of all the charges contained in the charge sheet issued to him at the formal domestic inquiry held against him,
- ii. that upon consideration of the seriousness of the charges for which he has been found guilty, it has been decided to dismiss him from service with effect from 2013-02-18 which is the date he was interdicted,
- iii. that he is not entitled to receive the salaries and any other allowance that had not been paid to him during his period of interdiction.

The Petitioner was granted two weeks time to file written submissions with regard to the objection raised by the Respondent pertaining to the

maintainability of this case. However the minute dated 2016-10-19 on the docket (which is a date after two weeks) shows that the Petitioner has failed to file any material.

As has been pointed out earlier the letter dated 2016-08-02 dismissing the Petitioner and depriving him of his salary and allowances during his period of interdiction is not under challenge. Hence even if this Court is to quash the document produced marked **P 2** the Petitioner will continue to be deprived of his salary and allowances during the period of his interdiction by virtue of the letter dated 2016-08-02 above referred to. Therefore we are of the view that this application has now become futile.

Although the dismissal from service had been communicated to the Petitioner by letter dated 2016-08-02, the Petitioner has at no stage shown any interest to bring this fact to the notice of this Court. What he had opted, when this fact was brought to the notice of Court by the learned Senior State Counsel, was to argue that he still can proceed as that fact has no bearing on this case. It would suffice to state here, in this regard, that a Petitioner in a Writ application has a duty to place all material facts pertaining to the case and that it is not open for him, at a later stage to

say that he was not aware of the importance of certain facts which he had omitted to place before Court.<sup>1</sup>

In any case all these issues could be agitated by the Petitioner in the proper forum designated by law for such purposes in accordance with law.

In these circumstances and for the foregoing reasons we see no basis to proceed with this case. Therefore we decide to terminate proceedings in this case and dismiss this application. We make no order for costs.

Application is dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**Vijith K. Malalgoda PC J**

I agree,

**PRESIDENT OF THE COURT OF APPEAL**

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<sup>1</sup> Walker Sons & Co. Ltd. Vs. Wijayasena [1997 (1) SLR 293 at 301].