

**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 and  
Mandamus* under article 140 of the Constitution  
of the Democratic Socialist Republic of Sri  
Lanka**

G.O.W.M. Gaurawawasansa,  
No 83/4, Ranasinghe Mw,  
Meegahawatta,  
Siyambalape.

**PETITIONER**

**CA/WRIT/59/2015**

**Vs,**

1. National Savings Bank  
“Savings House”  
No 255, Galle Road,  
Colombo 03.
2. Dammika Perera,  
Senior Deputy General Manager,  
National Savings Bank  
No 255, Galle Road,  
Colombo 03.
3. Sanjewa Serasinghe,  
Deputy General Manager,  
National Savings Bank  
No 255, Galle Road,  
Colombo 03.

3A. Madhubala Gunasekara,  
Assistant General Manager,  
National Savings Bank  
No 255, Galle Road,  
Colombo 03.

**RESPONDENTS**

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

**Counsel:** R. Chula Bandara for the Petitioner

Nayomi Kahawita SC, for the Respondents

Argued On: 18.02.2016

Written Submissions On: 04.05.2016

**Order On: 02.12.2016**

**Order**

**Vijith K. Malalgoda PC J**

Petitioner to the present application Opatha Gamage Withanilage Malani Gowrwawansa had come before this court seeking inter alia,

- B) A writ in the nature of *Certiorari* quashing and setting-a-side the purported letter of interdiction dated 12.01.2015
- C) Make order directing the 1<sup>st</sup> to the 3<sup>rd</sup> Respondents to re-instate the petitioner to her substantive post of Regional Manager with immediate affect

However the Petitioner did not pursue the relief prayed in paragraph (C) above during the argument and limited the argument to the relief prayed in paragraph (B) only.

The petitioner who has joined the 1<sup>st</sup> Respondent Bank on 01.08.1988 as Grade (IV) Officer and earned the promotions as follows,

- a) Promoted to Grade 111/111      1996
- b) Promoted to Grade 111/11      01.01.2000
- c) Promoted to Grade 111/1      05.06.2003
- d) Promoted to Grade 11      26.05.2007
- e) Promoted to Grade 1/1      01.12.2008

and was confirmed in Grade 1 in the Bank Service with effect from 01.12.2008. She was also appointed to the post of Regional Manager with effect from 01.01.2013 and was appointed to North Central Region.

In June and October 2014 the Petitioner had submitted applications for the post of Assistant General Managers which were fall vacant during the said period but, by letter dated 11.11.2014 issued by the 3<sup>rd</sup> Respondent the Petitioner was transferred to the credit division with immediate effect, but was not assign with any specific work and called upon to attend to unspecified areas of work as and when it arises.

During this period the Petitioner was served with a letter dated 14.07. 2014 where in the Deputy General Manager Audit had brought to the notice of the Petitioner about certain payments received by the Petitioner (P44) and thereafter by letter dated 12.01.2015 the 3<sup>rd</sup> Respondent had informed the interdiction of the Petitioner with immediate effect.

In this regard the petitioner has relied on the Disciplinary Code prepared under section 84 of the National Savings Bank Act No 30 of 1971 which is produced marked P-1 before this court.

However when this matter was taken up before this court the Respondents raised a preliminary objection to the maintainability of the present application on the ground that the matter referred to the present application relates and emanates from a contract of employment between an employer and employee and therefore not amenable to judicial review by way of public law remedies, namely prerogative writs...

Whilst raising the said preliminary objection the Respondents conceded that section 84 of the National Savings Bank Act recognizes and empowers the Board of the said Bank to make rules under section 84 (1) and (2) for matters stipulated in the said subsections including powers to make rules pertaining to appointment promotion, remuneration, disciplinary control and conduct of the officers and servants of the Bank and the grant of leave to them under 84 (2) (b) of the said Act, but argued that the said subsections should read together with subsection (3) which read thus,

“Every rule made under this Act by the Board shall be published in the Gazette, and shall come in to operation on such date as maybe specified in such rules or if no such date is so specified, on the date of such publication.”

and submitted that such rules should necessarily be published in the Gazette as it is a mandatory requirement under the Notional Savings Bank Act. In this regard Respondents have submitted two contradictory arguments before this court.

As submitted by the Respondents, they argued in one hand that it is mandatory to publish in the Gazette the rules made under section 84 (1) and (2) of the Act but at the same time took up the position that, since the Act recognizes and empowers the board to make rules in relation to matters specified therein the Board can make such rules in order to regulate its internal affairs and functions of the Bank.

In the said circumstances the Respondents argued that, for such rules to have a statutory flavour within the context of the National Savings Bank Act, they have to be published in the Gazette in terms of section 84 (3), but still the bank can make use of the rules which are not published under section 84 (3) but the only defence is that the said rules cannot be considered as rules having a statutory flavour.

As observed by this court, both the said arguments cannot be considered as correct since they are contradictory to each other. In this regard this court is mindful of the decision in *Nanayakkara V. the Institute of Chartered Accountants of Sri Lanka and Others (1981) 2 Sri LR 52 at 59 and 61* where Thambiah (J) had observed,

(Page 59) “I cannot accept the submission of Learned Counsel for the 1<sup>st</sup> Respondent that the Regulations in Manual of Procedure (R1) were not framed under statute. Section 12 of the Act No 23 of 1959 empowers the council to make regulation in respect of the following, amongst other matters- salaries allowances conditions of service, and the excise of the disciplinary control over officers and servants of the council.”

.....

(Page 61) **The regulations in the Manual of Procedure, which have become part of Act No 23 of 1959, have made inroads into the common law by regulating the ground of removal of an employee (Section 11 Paragraph 12) and the procedure to removal after inquiry. (Section 111 Paragraph 22.3) I agree with the submission of Learned Counsel for the Petitioner that the Petitioner's employment has a statutory flavor, which differentiates his employment from the ordinary relationship of master and servant. **The Manual Procedure (R1) give rights to employee and imposes obligations on the employer, which go****

**beyond the ordinary contract of service.** An employee can be dismissed only on specified grounds and he is entitled to an inquiry before dismissal.” (Emphasis added)

Even though the Respondents have made an attempt to differentiate the facts of the case in hand with the above case by referring to the provisions in the National Savings Bank Act, I see no merit in the said argument when considering the matters referred to above in the observations made by Thambiah (J) in the said Judgment.

In the said circumstance I see no merit in the preliminary objection raised by the Respondents before this court.

As observed above the main complaint made by the Petitioner before this court is the non compliance of the Disciplinary Rules of the National Savings Bank when interdicting the Petitioner.

In this regard the Petitioner has drawn my attention to part V of the Disciplinary Code which deals with the interdiction of an employee and Delegation of Powers Order referred to in the 1<sup>st</sup> schedule of the Disciplinary Code.

Whilst referring to rule 5.1 of the Disciplinary Code the Petitioner argued that the decision conveyed by P45, interdicting the services of the Petitioner was made, without any existing reason to interdict the Petitioner since Rule 5.1 requires the order to interdict a person has to be made by the disciplinary officer, if he considers that permitting the employee to continue in service would be detrimental.

In the said circumstances the Petitioner argued that the said decision conveyed by P45 is made *ultra-virus*, in violation of the Rules of National Justice, unreasonable and made *mala fide* for collateral reasons to victimize the Petitioner.

The Petitioner had further challenged the validity of the interdiction on the basis that the said interdiction order was not signed by the Disciplinary Officer as referred to under Delegation of Powers Order.

As observed by this court, the Petitioner is a Grade One Officer of the Respondent Bank and according to schedule 1 the Disciplinary Officer is the General Manager of the Bank but P45 is signed by Deputy General Manager (Human Resource)

During the argument before this court the Petitioner had only admitted issuing a letter dated 14.07.2014 (P44) by the Assistant General Manager Audit to which she replied by letter dated 27.08.2014 (P37) with annexure which were produced before this court marks P38 to P43 and thereafter recording a statement from her by the Assistant General Manager Audit in December 2014.

However during the arguments before this court the Respondents place before the court that,

- a) During the course of an internal audit inspection it was ascertained that the Petitioner had submitted receipts, and obtained certain sums of monies as traveling allowance contrary to the instructions provided in the letter dated 31.01.2013, P43,
- b) There upon an internal memo P44, was dispatched to the Petitioner bringing to the attention of the Petitioner about the said misappropriation and requesting the Petitioner to reimburse the said amount of money that had wrongfully paid to her,
- c) In response to P44, the Petitioner sends P37 together with photo copies of annexed documents marked respectively as P38, P39, P40, P41, P42 and P43,
- d) upon perusal of the said document submitted by the Petitioner the Internal Audit Department of the Respondent Bank decided to call for a report from the Department of Government Analyst with regard to the letter which was produced marked P38,

- e) Examiner of Questioned Document from the Government Analyst Department by his Report dated 14.11.2014 (1R9) confirmed several alterations, interpolations and introductions in the said document relied by the Petitioner,
- f) Thereafter, a preliminary investigation was conducted by the Audit Division of the Bank under the auspices of the Assistant General Manager (Audit) into this matter and accordingly the Petitioner was summoned to record a statement and a comprehensive statement was recorded from the Petitioner,(1R10)
- g) Additionally statements from several subordinate officers who worked at the Regional office under the Petitioner were also recorded at the said preliminary investigation,
- h) Thereafter, a report was prepared and submitted to the 2<sup>nd</sup> Respondent by the Deputy General Manager (Audit) (1R11),
- i) The said report was finally submitted to the Board of Directors of the Respondent Bank by the General Manager with his decision and finally the Board of Directors had given its approval for the decision taken by the General Manger to interdict and to serve a charge sheet under schedule 'A' and proceed for formal inquiry

As observed by this court, the Petitioner has failed to submit any of these materials before this court when she came before this court and sought relief as referred to above. When submitting her case before this court the Petitioner once again relied on her own document P38 which was confirmed to be a forged document by none other than the Examiner of Questioned Documents.

In these circumstances I observe that the Petitioner has failed to come before this court with clean hands, when she sought relief in the nature of a prerogative writ.

In the leading case of *R.V. Kensington Income Tax Commissioners (1917)1 KB 486* Scrutton LJ observed that..... an applicant who does not come with candid facts and clear hands cannot



hold a writ of the court soiled hands suppression or concealment of material facts is not advocacy. It is jugglery, which has no place in equitable and prerogative jurisdiction.

In the case of *Alponso Appuhamy Vs. L. Hettiarachchi and Another 1973 NLR 131* Pathirana J observed that,

“The necessity of a full and fair disclosure of all the material facts to be placed before the court when an application for a writ or injunction is made and the process of the court is invoked is laid down in the case of *The King V. The General Commissioners for the purpose of the Income Tax Acts for the District of Kensington-Ex-parte Princess Edmond de Poignac* - (1917) Kings Bench Division 486. Although this case deals with a writ of *Prohibition* the principles enunciated are applicable to all cases of writs or injunctions. In this case a Divisional Court without dealing with the merits of the case discharged the rule on the ground that the applicant had suppressed or misrepresented the facts material to her application. The Court of Appeal affirmed the decision of the Divisional Court that there had been a suppression of material facts by the applicant in her affidavit and therefore it was justified in refusing a writ of *Prohibition* without going into the merits of the case. In other words, so rigorous is the necessity for a full and truthful disclosure of all material facts that the court would not go into the merits of the application, but will dismiss it without further examination.”

In response to the argument raised with regard to the none compliance of Rules, the Respondent relied on documents produced before this court 1R1 and 1R1 (a) and submitted that, the powers of Divisional Heads and Managers conferred under the Rules have been delegated by way of a Circular dated 31.07.2000 to several officers as far the categorization contained in the table enclosed to the said circular.

As observed by this court the powers allocated by 1R1 and defined in 1R1 (a) limits to signing of various types of documents with regard to disciplinary matters and the said circular is not in conflict with the Disciplinary Rules before this court produced marked P-1.

According to 1R1 (a), signing of letters of interdiction with regard to 1-11/1 and 11 Grades had been entrusted to the Deputy General Manager (Human Resource) who is the 3<sup>rd</sup> Respondent to the present application.

As observed earlier, the Audit Department after its inquiry had produced its recommendations to the 2<sup>nd</sup> Respondent who was the Acting General Manager of the 1<sup>st</sup> Respondent Bank, and the said Respondent, being satisfied with the findings of the said report had decided to serve a charge sheet on the Petitioner after interdicting her services. The said decision of the 2<sup>nd</sup> Respondent was later submitted to the Board of Directors of the said Bank and was approved by the Director Board.

The Respondent took up the position that it is the decision of the 2<sup>nd</sup> Respondent Acting General Manager which was approved by the Board of Director of the 1<sup>st</sup> Respondent Bank and was communicated to the Petitioner by the 3<sup>rd</sup> Respondent who is empowered to do so by the circular 1R1 and 1R1 (a).

When considering the material discussed above I see no merit in the application before this court. I therefore make order dismissing this application but make no order with regard to cost.

Application dismissed.

PRESIDENT OF THE COURT OF APPEAL