

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

**In the matter of an application in the nature  
of Writs of *Certiorari* and *Mandamus* under  
article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.**

M.F.M. Munawwar  
No.516/30/1, Stage 11,  
Udaya Mawatha,  
Anuradhapura.

**Petitioner**

**CA (WRIT) 04/2015**

**Vs,**

1. Hon. Wijedasa Rajapaksa  
Minister of Justice,  
Ministry of Justice,  
Superior Court Complex,  
Colombo 12.
2. Nihal Padmasiri Jayamanna  
The Secretary,  
Ministry of Justice,  
Superior Court Complex,  
Colombo 12.
3. Hon. Attorney General,  
Attorney General Department,  
Colombo 12.

**Respondents**

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

**Counsel : Sabry Nilamudeen for the Petitioner  
Priyantha Navana SDSG for Attorney General**

**Order on : 06/02/2017**

## Order

**S.Thurairaja PC J**

The petitioner had sought a Writ of Certiorari and Writ of Mandamus against the Minister of Justice and the Secretary of the Ministry of Justice.

### Background

According to the petition of the petitioner, he was appointed as a Muslim Sudden Death Inquirer for a period of 5 years commencing from 17<sup>th</sup> December 2012 to 17<sup>th</sup> December 2017. The Secretary of Ministry of Justice had temporarily suspended his services from 21<sup>st</sup> October 2013 and his service was terminated with effect from 21<sup>st</sup> November 2014.

The petitioner submits in the petition that

Para [10]

*"On or around 25.11.2013 the person called J.M.Yoonus on the direction of Iynullah who was the private secretary of the first respondent made a complaint against the petitioner to the Anuradhapura police alleging that the petitioner has submitted forged and counterfeit documents to the first respondent ministry to obtain his post."* [Emphasis Added]

Para [11]

*"Subsequently the Anuradhapura Police instituted an action at the magistrate court of Anuradhapura under the case No.3739/13 against the petitioner."* [Emphasis Added]

Para [12]

*"On or around 28.08.2014 the petitioner has been acquitted from all counts which have been set out in the said case."* [Emphasis Added]

The petitioner further submits in the petition as follows

Para [14]

*"the petitioner had the legitimate expectation that he should have been reinstated in his post in view of the Magistrate Court Order."* [Emphasis Added]

The petitioner further submits that the decision of the 1<sup>st</sup> respondent in ultra vires, arbitrary capricious and contrary to law.

The petitioner also submits that the final respondent acted with malice.

Senior D.S.G who is appearing for the Respondents held objection as submitted that the petitioner had suppressed material facts to courts.

The post-Muslim Sudden Death Inquirer was advertised by the Secretary of Ministry of Justice by gazette dated 23/09/2011 which is marked as R1.

The petitioner has submitted an application together with a character certificate alleged to have issued by 'Peace Welfare', Nuwaragampalatha East, Divisional Secretariat stage 2, Anuradhapura. It was found that the said address belongs to a divisional secretarial and such institution does not exist there. There was a complaint to the special investigation unit of Anuradhapura Police and was, in turn, reported to the magistrate of Anuradhapura under the B report number 3739/13. It is noted that the complaint was made for **making a false document** after the investigation it was found that there is no evidence that the petitioner had not made the document accordingly the petitioner was discharged from the case.

In the meantime, there was another complaint made against the petitioner that he had obtained Rs.500,000/- from Niyaz Mohamed Salman in the pretext of sending him to England. The petitioner pleaded not guilty to the charge but accepted to refund the money. Accordingly, the petitioner paid Rs.500,000/- and the case bearing number B3637/13 was settled and the petitioner was discharged on the 19<sup>th</sup> December 2014.

There was an inquiry held against the petitioner at the Ministry of Justice on the 9<sup>th</sup> April 2014 for submitting wrong information to the Ministry of Justice and accepting money from N.M.Salman, findings and recommendations were submitted to the 2<sup>nd</sup> Respondent, by report dated 04/11/2009. There, it was recommended by the inquirer that the petitioner is unfit person to hold the office of inquirer into sudden death, the said proceedings and report were submitted by the respondent marked R6.

At the inquiry against the petitioner, he had made a statement and admitted that the said character letter issued institution was not existent at the given address. It further noticed that the petitioner had admitted that he was the Treasurer of the said organisation.

The petitioner also admitted that his information of working at Gabman Solicitors Irish (sic) in London does not exist. Among other admissions the petitioner also admitted repaying Rs.500,000/- to Mohamed Salman.

The inquirer who was appointed by the 2<sup>nd</sup> respondent after the inquiry had come to the finding that the petitioner had submitted documents which are incorrect and contradictory to accepted norms. Further, the petitioners obtained money in the false pretence and repaid the same after the complaint was made to police and courts.

The inquirer opinioned that the office of sudden death inquirer in a respectable post and it requisites honesty and example to others.

The inquirer had finally concluded that after considering the materials at the investigation that Mr. M.F.M. Munawwar the petitioner is unfit to hold the office of sudden death inquirer.

The petitioner did not reveal anything about the inquiry in his petition nor affidavit.

Letter of appointment dated 24/12/2012 marked P1 has 9 paragraphs. 8<sup>th</sup> paragraph reads as follows

මෙම පත්වීම ලබා ගැනීම සඳහා ඔබ විසින් දැන දැනම අසත්‍ය තොරතුරු සපයා ඇති බවක් හෝ කිසියම් වැදගත් කරුණක් දැන දැනම වසන් කර ඇති බවක් හෝ පෙනී ගියහොත්, ඔබ අප්‍රමාදව සේවයෙන් පහ කිරීමට පුළුවන.

Petitioner contents in his argument that he was acquitted in the first Magistrate Court case bearing number 3739/13; hence he has a legitimate expectation to be taken back to the services.

The learned Senior D.S.G submitted that the case before the Magistrate was for “**making a false document**”, but the inquiry was for submitting **wrong information** to the appointing authority, and accepting money from Salman in the pretext of sending him to United Kingdom (without any legal authorization). The Petitioner was found guilty after proper inquiry accordingly his services was terminated.

Normally the inquest is conducted by the magistrate of the respective area. The Sudden Death Inquirer conducts inquiry on matters where the Magistrates allow them to do so. I mentioned this for the reason that in the eyes of the public Sudden Death Inquirer also honored as a judicial officer (not officially). Therefore the holder of this esteemed office should be above of all suspicion and behave himself in a very dignified manner.

Considering the available facts before the court we are of the view that the decision of the 2<sup>nd</sup> respondent is reasonable, proper and legal hence we conclude that it need not be quashed.

After careful consideration, this court is of the view that the petitioner is not entitled for a Writ of Certiorari and Writ of Mandamus hence we refuse to grant the same.

Writ of Certiorari and Writ of Mandamus refused no cost ordered.

**Application dismissed.**

**JUDGE OF THE COURT OF APPEAL**

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

**I agree,**

**PRESIDENT OF THE COURT OF APPEAL**