

**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**

Chandana Sri Prasanna Kumara Wellangiriya,
No. 17, Maha Vidyalaya Road,
Ambalangoda.

PETITIONER

CA/WRIT/149/2013

Vs,

1. M.M.C. Fernando,
Secretary,
Ministry of Power and Energy,
No. 72, Ananda Coomaraswami Mw,
Colombo 07.
- 1A. Dr. B.M.S. Batagoda,
Secretary,
Ministry of Power and Energy,
No. 72, Ananda Coomaraswami Mw,
Colombo 07.
2. Ceylon Electricity Board,
Sir Chittampalam A. Gardiner Mw,
Colombo 02.
3. W.G. Ganegala,
Chairman, Ceylon Electricity Board,
Sir Chittampalam A. Gardiner Mw,
Colombo 02.
- 3A. A.W.D.A.S. Wijeyapala,
Chairman, Ceylon Electricity Board,
Sir Chittampalam A. Gardiner Mw,

- Colombo 02.
4. T.M. Herath,
Vice Chairman, Ceylon Electricity Board,
Sir Chittampalam A. Gardiner Mw,
Colombo 02.
- 4A. B.N.I.F.A. Wickramasuriya,
Vice Chairman, Ceylon Electricity Board,
Sir Chittampalam A. Gardiner Mw,
Colombo 02.
5. K.I.D.P. Karunaratna,
Working Director,
Ceylon Electricity Board,
Sir Chittampalam A. Gardiner Mw,
Colombo 02.
- 5A. N.G.K. Gunatilake,
Working Director,
Ceylon Electricity Board,
Sir Chittampalam A. Gardiner Mw,
Colombo 02.
6. Mrs. Jeewani Kariyawasam
7. S.S. Miyanwala
8. J. Dadallage
9. R. Semasinghe
All are Directors,
Ceylon Electricity Board,
Sir Chittampalam A. Gardiner Mw,
Colombo 02.
10. B.N.I.F.A. Wickramasooriya,
General Manager,
Ceylon Electricity Board,
Sir Chittampalam A. Gardiner Mw,
Colombo 02.
- 10A.M.C. Wickramasekara,
General Manager,

Ceylon Electricity Board,
 Sir Chittampalam A. Gardiner Mw,
 Colombo 02.

11. Choolani Perera,
 Deputy General Manager, (Personal)
 Ceylon Electricity Board,
 Sir Chittampalam A. Gardiner Mw,
 Colombo 02.

11A.K.G.F.R. Comester,
 Deputy General Manager, (Personal)
 Ceylon Electricity Board,
 Sir Chittampalam A. Gardiner Mw,
 Colombo 02.

12. M.G. Thilakarathne,
 Additional General Manager (Region 04)
 No 1, Fairline Road,
 Dehiwala.

13. Hon. Attorney General,
 Attorney General's Department,
 Colombo 12.

RESPONDENTS

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

Counsel: Gamini Hettiarachchi with Sithara Abeywardena for the Petitioner
 Vikum de. Abrew DSG for the Attorney General

Argued On: 25.01.2016

Written Submissions On: 12.04.2016, 11.07.2016

Order On: 09.02.2017

Order

Vijith K. Malalgoda PC J

Petitioner to the present application Chandana Sri Prasanna Kumara Wellangiriya had come before this court seeking inter alia,

- b) Issue a writ of *Certiorari* quashing the disciplinary order of the 12th Respondent marked as P-12
- c) Issue a writ of *Certiorari* quashing the reinstatement letter of the 11th Respondent marked as P-13
- d) Issue a writ of *Mandamus* compelling and directing the 10th Respondent and/or any other Respondents to reinstate the Petitioner in the post of Electrical Superintendent Grade II A with back wages and all other privileges

At the commencement of the arguments before this court the Learned Deputy Solicitor General representing the Respondents had raised a preliminary objection to the maintainability of the present application on two grounds, namely suppression of material facts as the 1st ground and secondly granting of a writ of *Mandamus* as prayed for or any other relief would be futile.

As observed by this court the Petitioner was attached to the 2nd Respondent Board as a store keeper and was appointed to the post of Electrical Superintendent Grade II B with effect from 09.08.1995 and was promoted as Grade II A officer of the Electrical Superintendent Service with effect from 09.08.2005.

While the Petitioner was working as the Electrical Superintendent Grade II A attached to Elpitiya Customer Service Centre, the Special Investigation Unit of the 2nd Respondent Board initiated an inquiry into some allegations received against the Petitioner.

As admitted by both parties, subsequent to the said investigation a charge sheet was issued on the Petitioner and was interdicted with effect from 31. 01. 2012 pending the said inquiry.

A formal disciplinary inquiry was held against the Petitioner, where several witnesses had given evidence for the prosecution. The Petitioner opted not to give evidence at the said inquiry but submitted a written statement at the conclusion of the inquiry.

As submitted by the Petitioner, he was served with a disciplinary order by the 12th Respondent dated 16.01.2013 in which the disciplinary tribunal has found the Petitioner guilty of charges 5, 6, 7, 10, 11 and 17 of the charge sheet and the Petitioner was reinstated to a lower grade, i.e. Store Keeper Grade III, which was the post held by him previously and transferred to a place where there was no consumer relations.

The Petitioner was subsequently served with a reinstatement letter signed by the 11th Respondent and according to the said letter which was produced marked P-13 the Petitioner was reinstated subject to the following conditions;

- a) Will be demoted to the post of Store Keeper Grade III
- b) Will be placed at the initial salary step of the above post
- c) Will be subject to one year probation
- d) Interdiction period will be considered as no pay leave
- e) Will be transferred from AGM region 4 to AGM region I

The Petitioner who was dissatisfied with the said disciplinary order and the reinstatement order had made an application for a copy of the inquiry proceedings to lodge an appeal but the 12th Respondent had refused to issue him with the inquiry proceedings and thereafter he had submitted an appeal to the 3rd Respondent against the said two orders.

One main allegation raised before us by the Petitioner is the failure by any one of the Respondents referred to above to respond to the appeal preferred by the Petitioner for nearly 3 years, and therefore the Petitioner had decided to come before this court seeking the relief as referred to above.

As observed above, the Petitioner in his petition had referred to the reinstatement letter received by him, and being dissatisfied with the said order, appealed against the order but, is silent on the fact whether he complied with the said order, before complaining against it.

However whilst submitting that the Petitioner is guilty of suppressing material facts before this court, the Learned Deputy Solicitor General who represented the 2nd Respondent had submitted that, when the Petitioner was informed to report to work by the letter dated 23.01.2013 (P-13), he did not report to work as directed in the said letter. Since the Petitioner did not report to work, he was served with a vacation of post notice and the said notice too had been submitted before this court marked R-4 with the amended counter objections filed on behalf of the said Respondents.

In the said vacation of post notice, which was sent to the Petitioner by Additional General Manager Region 1 on 29.05.2013 had referred to the communications between the Petitioner and the Respondent as follows;

“ ඔබ 2013.01.23 දින සිට නිවාඩු ලබා හෝ දැනුම්දීමකින් තොරව සේවයට නොපැමිණ සිටින බැවින් වහාම සේවයට වාර්තාකරන ලෙසත් අසනීපයෙන් පසුවන්නේනම් වෛද්‍ය සහතික ඉදිරිපත්කරන ලෙසත් දන්වා ඔබවෙත එවන ලද විදුලි පුවතට සහ එම විදුලි පුවත සනාථ කරමින් එවූ 2013.03.05 දිනැති ලිපියට මෙතෙක් ඔබගේ කිසිදු ප්‍රතිචාරයක් ලැබී නොමැත.

එබැවින් ඔබ 2013.01.23 වෙනි දින පටන් ලංකා විදුලිබල මණ්ඩලයේ ඔබ දැරූ තනතුර හැරගියායේ සලකනු ලබන බව ඔබට මෙයින් දන්වා සිටිනු ලැබේ.”

However when the Respondents took up the said position in their amended objections, the Petitioner submitted marked P-19 another communication dated 05.03.2013 from Additional General Manager Region 1 to the effect,

“සේවයට වාර්තා කිරීම

විධිමත් විනය පරීක්ෂණයකින් පසු නැවත සේවයේ පිහිටුවා ඇති ඔබ, නි.සා. පරීස් ගේ අංක ඩීපීඑම්(පී)/එච්ආර්එම්/(ආර්පීඩීඑම්)/ඩීඅයිසී03 හා 2013.01.23දිනැති ලිපිය මගින් අතිරේක සාමාන්‍යාධිකාරී (කලාප 1) වෙත අනුයුක්ත කරඇතත්, මේ දක්වා සේවයට වාර්තාකර නොමැත. ඔබ විසින් 2013.01.23 දින එවන ලද විදුලි පණිවිඩය ලැබීඇත. එබැවින් සුවවූ වහාම පිලිගතහැකි රජයේ වෛද්‍ය වාර්තා සමඟ සේවයට වාර්තා කරන්න.”

Even though by submitting the above letter the Petitioner made an attempt for the first time to show that he send a telegram informing his inability to report to work due to ill health, it is understood when compared the two letters, that,

- a) The Petitioner has not submitted any medical certificate acceptable to the 2nd Respondent
- b) Has not reported to work until 29. 05.2013

In the circumstances the Petitioner was considered as vacated his post with effect from 23.01.2013.

As further observed by this court the Petitioner’s contention before this court was to challenge the disciplinary order dated 16.01.2013 and the reinstatement letter dated 23.01.2013 but as observed above the Petitioner was served with the vacation of post notice on 29.05.2013 operative from 23.01.2013 which has not been challenged by the Petitioner before this court.

As referred to above the Petitioner has sought to quash the above two decisions dated 16.01.2013 and 23.01.2013 and also sought a writ of Mandamus compelling the Respondent to reinstate him in the post of Electrical Superintendent Grade II A, but he has failed to sought relief to quash the vacation

of post notice served on him and therefore the purpose of granting the relief prayed by the Petitioner will become futile until the said vacation of post notice is in operation.

In the case of *Sideek V. Jacolin Senevirathne 1984 1 Sri LR 83* the Supreme Court held that, the court will have regard to the special circumstances of the case before it, before issuing a writ of *Certiorari*. The writ of *Certiorari* clearly will not issue where the end result will be faulty, frustration, injustice and illegality.

In the Case of *P.S. Bus Company Ltd V. Ceylon Transport Board (1958) 61NLR 491* it was held, that the prerogative writs are not issued as a matter of course and it is in the discretion of court to grant it if the facts and circumstances are such as to warrant a refusal. A writ for instance, will not issue where it would be vexatious or futile.

The next preliminary objection raised by the Respondent was based on the Petitioner's failure to place before court material facts or in other words, suppression of material facts.

As revealed above, until the Respondents submitted the vacation of post notice served on the Petitioner by their amended statement of objection, Petitioner did not divulge the fact that the Respondents have vacated his post for his failure to comply with the reinstatement order and report to the new work place under the Additional General Manager Region I. As observed above in this order, the fact that the Petitioner was served with a vacation of post notice by the Respondent is very material to the case in hand. If this court proceeded with this case and issued the relief claimed by the Petitioner, the said issuance would become futile and therefore the failure by the Petitioner to disclose the fact that he had been served with a vacation of post notice is misleading and therefore it appear that the said conduct of the Petitioner amounts to suppression of material facts from this court.

In the Land Mark case of *Alponso Appuhamy V. 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 the case of *Mosajees V. Eksath Engineru Saha Samanya Kamkaru Samithya 1979 (2) NLR 285* Supreme Court held,

“It is evident on the material before us that Moosajees Ltd. employed Upasaka Appu to serve as a tool in their hands to themselves escape liabilities of employment. The pleading in their petition and affidavit do not contain a full disclosure of the real facts of the case to say the least the Petitioner has not observed the utmost good faith and has been guilty of a lack of *uberrima fides* by a suppression of material facts in the pleadings.”

In the case of *Borella Private Hospital V. Bandaranayake and two others 2005 (1) Appellate Law Recorder 27* Sripawan (J) (as he was then) observed that, the writ of *Certiorari* and *Mandamus* being discretionary remedies will not be granted where the party applying lacks *uberrima fides* and fails to disclose material facts to court. As Pathirana J held in the case of *Alponso Appuhamy V. Hettiarachi 77 NLR 131*, if a party who wanting in *uberrima fides*, the Court will not grant him relief.” A similar

sentiment was expressed by *A. De. Z. Gunawardena J in the case of Collettes Ltd., V. Commissioner of Labour (1989) 2 SLR 6 at 17* where His Lordship stated that “it is essential when a party invokes the writ jurisdiction or applies for an injunction to this court, all facts must be clearly, fairly and fully pleaded, so that the court would be made aware of all the relevant matters. It is necessary that this procedure must be followed by all litigants who come before this court in order to ensure that justice and fair play would prevail.”

Thus, it is seen where there had been suppression of material facts, the Petitioner’s application is liable to be dismissed without going into the merits of the case. Since the Petitioner has failed to disclose facts material to this application, the court will not in any event and grant and issue the wits it prayed for.”

In the said circumstance, I observed that the Petitioner is guilty of suppressing material facts before this court and therefore liable to be dismissed without going to the merits of the case.

For the forgoing reasons I uphold the preliminary objections raised by the Learned Deputy Solicitor General on behalf of the Respondents and therefore dismiss this application but make no order with regard to cost.

Application dismissed.

President of the Court of Appeal

S. Devika de. Tennakoon J

I agree,

Judge of the Court of Appeal