

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

In the matter of an Application for Writs in the nature of *Certiorari*, *Mandamus* and *Prohibition* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

P.J. Anoma,
Adarsha Junction,
Kananwila,
Horana.

Petitioner

Case No: CA/WRIT/148/2014

Vs.

1. Chandrani Samarakoon,
Commissioner of Local Government- Western
Province,
No. 2, Cambridge Terrace,
Colombo 07.
2. S. Alawi Moulana,
Governor-Western Province,
Secretariat of the Governor-Western Province,
98/4,
Havelock Road,
Colombo 05.

3. Horana Pradeshiya Sabha,
Kananwila,
Horana.
4. Y.C. Hathurusinghe,
The Chairman,
'Horana Pradeshiya Sabha',
Kananwila, Horana.
5. M. Sirimewan De Silva,
No: 25, Kanda Kurunduwatta,
Dediyawela,
Waskaduwa.
6. A.M. Karunaratne, Chairman,
7. B.G.H.A. Mahendra Silva, Member,
8. A. Mustapha, Member,
9. H. Sumanapala, Member,
10. Ashroff Ghani, Member,
6th to 10th All of Western Province Provincial
Public Service Commission, No. 532/7,
Elvitigala Mawatha, Narahenpita,
Colombo-05.
11. V. Rajapakse,
Secretary.
Western Province Provincial Public Service
Commission,
No. 532/7, Elvitigala Mawatha,
Narahenpita, Colombo 05.

Respondents

Before : P. Padman Surasena, J. (P/CA)

&

A.L. Shiran Gooneratne J.

Counsel : J.C. Weliamuna, PC with Pasindu Silva for the Petitioner.

Shantha Jayawardhana with Hiranya Damunupola for the 3rd and
4th Respondents.

U.P. Senasinghe, SC for the 1st, 2nd and 5th to 11th Respondents.

Written Submissions of the Petitioner filed on: 04/04/2018

Written Submissions of the 1st, 2nd & 6th to 11th Respondents filed on: 11/04/2018

Argued on : 09/03/2018

Judgment on : 02/07/2018

A.L. Shiran Gooneratne J.

The Petitioner has invoked the jurisdiction of this Court, inter alia, to seek a mandate in the nature of writ of Certiorari to quash the order of the disciplinary inquiry and the decision to transfer the Petitioner to the Bandaragama Pradeshiya Sabha, as contained in the impugned document marked P18, read with P10, and a mandate in the nature of writ of Prohibition to prevent the Respondents from recovering a sum of Rs. 10,700/- from the Petitioner as contained in document marked P18.

At the conclusion of the disciplinary inquiry held in terms of Chapter XLVII Section 24:6 of the Establishment Code, the 1st Respondent by order dated 31/03/2014, marked P18, found the Petitioner guilty of charge No. I, II and VIII. Charge No. I relates to the installation of a used Air Conditioner in the office of the Chairman of the Pradeshiya Sabha and charge No. II relates to misappropriation of machinery of the said Pradeshiya Sabha. Charge No. VIII is a consequential charge.

The Petitioner challenges the said decision on the basis that, "*Charge No. I, is based solely on Rule 177, and the charge does not read with Rule 178, and therefore the charge is vague.*"

Charge No. I, is as follows;

"Committing a wrong under Chapter No. 15 of the 1st Schedule to chapter XLVIII of the Establishment Code by acting in violation or intentionally evading to follow Rule 177 of the Pradeshiya Sabha (Financial and Administrative) Rules in purchasing an Air Conditioner Plant for the Chairman's Office Room."

Charge No. I, based on Rule 177, is to be read with provisions set out in Rule 178. However, the Petitioner states that the said charge was formulated exclusively based on Rule 177. The Petitioner submits that "the said Rule refers to the procedure in general and does not refer to any specific legal provision." Rule

177 deals with **any supply of material** exceeding the expenditure of Rs. 50,000/- or more. The Procedural Rule applicable is Rule 178.

It is observed that the above contention of the Petitioner is totally contradictory to the contents of paragraph 32 (d), of the affidavit, under heading "1988 Pradeshiya Sabha (Financial & Administration) Regulations", where it is stated;

(d) Tender Procedure:-

(i) For a contract to obtain services or works or goods with expenditure of Rs. 50,000 and above, the procedure given in the Regulations there under should be followed (Regulation 177)

(ii) Regulation 178, describes the tender procedure which should be followed in instances stated under regulation 177.

The Petitioner submits that "she understood the charge as been one exclusively on rule 177 only". However as noted above, the Petitioner, in her pleadings has contradicted the said assertion on this material issue. The Petitioner, a Class I Officer of the Local Government Management Service with more than 20 years experience in public service and having served in several other Pradeshiya Sabha's prior to holding the present position, cannot be heard to plead ignorance of the Procedural Rule that the tender procedure contemplated in Regulation 177,

is not to be read in isolation, but to be read together with the provisions set out in Rule 178, which deals with all its procedural requirements.

Rule 177, states;

“the procedure set out in these rules shall apply to any contract for the execution or performance of any work or service or any supply of material or any other matter exceeding the expenditure or Rs. 5,000/- or more.”

Rule 178 (5), requires for calling open tenders exhibited in public places and published in at least two newspapers specially when the work costs exceeds Rs. 100,000/-. The cost of the Air Conditioner installed has exceeded the amount specified in the said Rule.

In the circumstances, the Petitioner now cannot complain of vagueness of charges preferred against her. Accordingly, the Petitioner's conduct on procuring the air conditioner plant in violation of Rule 177 of the Financial and Administrative Regulations 1989, published in the Extraordinary Gazette Notification No. 554/5, dated 17/04/1989, marked X, has been formulated to the best of her understanding of the charge brought against her.

It is common ground that on an appeal to the impugned decision of the disciplinary inquiry, the Provincial Public Service Commission has decided to recover the loss incurred by the installation of the air conditioning plant from all relevant officers. Therefore, due to the variation of the decision challenged and the

consequent change in circumstances the recovery of the total loss from the Petitioner would not arise for consideration at this stage.

The 1st Respondent has also brought to the notice of Court that the Petitioner was able to prefer an appeal to the Governor in this regard, but has failed to follow up with the process, which is an effective and an equally convenient alternate remedy. It is observed that the Petitioner has withdrawn an appeal preferred to the Governor against the impugned decision, without awaiting the outcome of the appeal which would amount to a failure to exhaust an administrative remedy available to the Petitioner provided by Section 33 (8), of the Provincial Council Act No. 42 of 1987 (as amended).

Section 33(8) states,

“The Governor of a province shall have the power to alter, vary or rescind any appointment, order or transfer or dismissal or any other order relating to a disciplinary matter made by the Provincial Public Service Commission of that province, on appeal or otherwise, or by the Chief Secretary or any officer of the Provincial Public Service of that province, to whom such Provincial Public Service Commission has delegated its powers under section 32.”

The 1st Respondent has cited the case of *Mendis Vs. Land Reform Commission and others-SC Appeal No. 90/2009*, where the court held;

"Even if such ground to issue a writ of certiorari and mandamus could be established, court has also to consider whether the Petitioners are disentitled to the relief prayed for even if the grounds of issuing a writ are satisfied, due to the discretionary nature of the remedy. It is common ground that courts are reluctant and on numerous occasions refused to issue propagative writs if it could be established and Petitioners are guilty of/and or disentitled to the remedy, based on (a) laches / undue delay ----- availability of alternate remedy-----"

In all the above reasons it is the view of this Court that the Petitioner has not established any legal basis for this Court to grant any of the reliefs prayed for.

Therefore, the Petition is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

P. Padman Surasena, J. (P/CA)

I agree.

PRESIDENT OF THE COURT OF APPEAL