

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

Boyagodage Manoj Lanka
Padma Kumara Karunaratne,
D6/3/2, Manning Town Houses,
Matha Road,
Colombo 8.
Petitioner

CASE NO: CA/471/2015/WRIT

Vs.

1. Janaka Sugathadasa,
The Secretary,
Ministry of Health, Nutrition and
Indigenous Medicine,
No. 385,
Rev. Baddegama Wimalawansa
Thero Mawatha,
Colombo 10.
2. Janaka Sri Chandraguptha,
Additional Secretary
(Administration),
Ministry of Health, Nutrition and
Indigenous Medicine,
No. 385,
Rev. Baddegama Wimalawansa
Thero Mawatha,
Colombo 10,
and 15 others.

Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Nihal Jayawardena, P.C., with A.R.P. Bandara and
Thivanka Attygalle for the Petitioner.

Anusha Fernando, D.S.G., with Gayesha Wijemanne
for the Respondents.

Argued on: 14.05.2018

Written Submissions:

13.06.2018 by the Respondents

14.06.2018 by the Petitioner

Decided on: 16.07.2018

Samayawardhena, J.

The petitioner was the Accountant of the Medical Supplies Division of the Ministry of Health, Nutrition and Indigenous Medicine. After the preliminary inquiry, he was interdicted by the 2nd respondent-Acting Secretary of the Ministry by the letter dated 21.10.2015 marked P9 on the basis *inter alia* that he violated Government Financial Regulations in making a certain payment. The petitioner filed this application seeking (a) to quash P9 by way of a writ of certiorari and (b) to direct the 1st respondent-Secretary of the Ministry to hold an appropriate inquiry or in the alternative to reinstate the petitioner by way of a writ of mandamus. The 1st respondent filed objections to this application. Hence this Judgment.

The said payment has been made on the decision of the relevant Procurement Committee of the Health Ministry marked P8, which the petitioner as the Accountant has certified as a true copy. It

has later been revealed that P8 is partly forged in that the signature of the Secretary to the Ministry, which is required to complete the process, has been forged. The subject clerk has later accepted the liability for forging the document.

It is the position of the petitioner that as a member who participated in that Procurement Committee, he knew the correctness of the entries in P8 to be completely accurate and hence he had no reason to suspect the document P8 when he approved the payment voucher and there is no financial loss whatsoever caused to the Government due to any action taken by him and therefore there is no misconduct on his part warranting interdiction pending formal disciplinary inquiry.

The principal argument of learned President's Counsel for the petitioner is that, according to the Government Gazette No. 1733/52 dated 25.11.2011 marked A3, it is the Deputy Secretary to the Treasury and not the Secretary to the Health Ministry who had the authority to interdict the petitioner and therefore the interdiction by the Secretary to the Ministry by P8 is a nullity and has no force or avail in law.

The 17th Amendment to the Constitution which came into force on 03.10.2001 repealed Chapter IX of the Constitution and replaced a new Chapter containing Articles 54-61 in regard to the Public Service Commission.

According to Article 55 of the Constitution, the appointment, promotion, transfer, disciplinary control and dismissal of public officers shall be vested in the Public Service Commission.

Article 57(1) states that the Public Service Commission may delegate such powers to a public officer subject to conditions, and

Article 57(2) enacts that the Commission shall cause any such delegation of powers to be published in the Gazette.

It is noteworthy that by the Gazette marked A3, the Public Service Commission has delegated disciplinary control of the public officers of the Sri Lanka Accountant Service such as the petitioner to the Deputy Secretary to the Treasury only in respect of offences contained in the second schedule to Chapter XLVIII of the Establishment Code, and therefore in respect of offences contained in the first schedule, the Public Service Commission has retained its authority.

Article 61B of the Constitution states that all rules, regulations and procedures relating to the public service as were in force on the date of the coming into operation of that Chapter shall be deemed to continue in force until the Public Service Commission otherwise provides.

The petitioner was interdicted under section 31 of Chapter XLVIII of the Establishment Code whereby *inter alia* a Secretary to a Ministry is empowered to interdict a public officer on certain acts of misconduct subject to the covering approval of the Disciplinary Authority, which is the Public Service Commission.

According to the letter of interdiction marked P9, one of the offences committed by the petitioner is an alleged violation of Government Financial Regulation No.137, which is an offence falls in the First Schedule to Chapter XLVIII of the Establishment Code.

Hence the argument of learned President's Counsel for the petitioner that interdiction was made by the Secretary to the Ministry without any authority and therefore is a nullity is not entitled to succeed.

Learned President's Counsel for the petitioner then makes a detailed analysis of facts to say that the petitioner has committed no offence and he has acted right throughout *bona fide* and therefore the decision to chargesheet the petitioner for an offence falling under the First Schedule to Chapter XLVIII of the Establishment Code and to interdict the petitioner pending formal inquiry is manifestly unreasonable and irrational. Notwithstanding in my view there is force in that submission, I must say that this Court in the exercise of writ jurisdiction is not expected to enter too much into the arena meant for the disciplinary authority and endeavour to substitute the views of this Court in place of those of the disciplinary authority especially when the formal disciplinary inquiry is underway, unless the impugned decision is outrageously unreasonable or irrational.

In judicial review, unreasonableness or irrationality is assessed by the standard of unreasonableness set out in *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation*¹, which is commonly known as "Wednesbury unreasonableness". It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. (*Council of Civil Service Unions v. Minister for the Civil Service*²) Given the fact that the payment was made on a document later proved to be a forged one, which the petitioner as the Accountant had certified as a true copy, I doubt whether this Court can say that the decision is irrational or perverse according to Wednesbury standard notwithstanding there are forceful mitigating circumstances,

¹ [1948] 1 KB 223

² [1984] 3 All ER 935

which, I am certain, the disciplinary authority will take into account at the end of the formal disciplinary inquiry.

After filing this application, the Public Service Commission being the Disciplinary Authority of the petitioner has by R5 dated 11.01.2016 granted covering approval to the decision of the Secretary to the Ministry contained in P9.

The Public Service Commission is not a party to this application nor can its decisions be challenged before this Court except by way of a fundamental rights application in the Supreme Court in view of Article 61A of the Constitution.

In the said circumstances, writ of certiorari cannot be issued to quash P9.

Writ of mandamus directing the 1st respondent Secretary to the Ministry to hold an appropriate inquiry or in the alternative to reinstate the petitioner cannot also be issued for obvious reasons. On the one hand, the petitioner was interdicted after a preliminary inquiry and formal disciplinary inquiry is now in progress. On the other, interdiction once approved by the Public Service Commission cannot be lifted by the Secretary to the Ministry.

Application of the petitioner is dismissed but without costs.

Judge of the Court of Appeal