

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

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

W.I. Prabhath Wimal Kumara,
Palipana Estate,
Ambalampitiya,
Kurunegala.

Petitioner

Case No: CA/WRIT/114/2016

Vs.

1. Sri Lanka Council for Agricultural Research
Policy,
114/9, Wijerama Mawatha,
Colombo 07.
2. A.R. Ariyaratne,
Secretary/ Director,
Sri Lanka Council for Agricultural Research
Policy,
114/9, Wijerama Mawatha,
Colombo 07.
3. S.D.G. Jayawardena,
Chairman,
Secretary/ Director,
Sri Lanka Council for Agricultural Research
Policy,
114/9, Wijerama Mawatha,
Colombo 07.

Respondents

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

&

A.L. Shiran Gooneratne J.

Counsel : Sanjeeva Ranaweera for the Petitioner.

Anusha Samaranayake, DSG for the Respondents.

Argued on : 12/03/2018

Decided on : 20/07/2018

A.L. Shiran Gooneratne J.

By this application, the Petitioner has sought a mandate in the nature of writ of Certiorari to quash a decision of vacation of post and preventing the Petitioner from entering the precincts of the 1st Respondent Institution, by the 2nd Respondent, as reflected in document marked P 11, and/or P 20.

The Petitioner held the post of Secretary/ Director of the Sri Lanka Council for Agricultural Research. By application dated 09/12/2015, marked P7a, the Petitioner has applied for overseas leave from 15th to 20th December 2015. The 2nd Respondent by letter dated 11/12/2015, marked P7b, has forwarded the said application to the Secretary, Ministry of Agriculture for approval. By letter dated 14/12/2015, marked P18, the Petitioner's application for overseas leave has been refused.

The Petitioner states that by letter dated 11/12/2015, marked P8, the 2nd Respondent had confirmed that the leave out of Sri Lanka has been duly approved. Furthermore, the Petitioner submits that despite the said approval he informed the 2nd and 3rd Respondents via tele mail marked P 9a, P 9b, and P 9c, that to his knowledge leave sought to be out of the country had been approved and therefore, he would report back for duty on 21/12/2015.

By letter dated 16/12/2015, marked P10, the 2nd Respondent has informed the Petitioner that he has failed to report to work on 15th December 2015, and requested the Petitioner to report to work forthwith. Since the Petitioner failed to comply with the said direction, by the impugned letter dated 18/12/2015, marked P11, the Petitioner was notified that he has vacated post. By letter dated 22/12/2015, marked P12, the Petitioner admits that he reported for duty on 21/12/2015.

In paragraph 11, of the affidavit filed of record the Petitioner admits that the leave application submitted to the 2nd Respondent was pending approval of the relevant authority as required by law. However, the Petitioner relies on documents marked P9a to P9c, in support of absence without leave for the period 15th December 2015 to 20th December 2015, to challenge the impugned decision as reflected in documents marked P11 and P20. The Petitioner's stand is that the letter given by the 2nd Respondent marked P8, to facilitate his visa application is sufficient proof of approval of leave for the relevant period.

The Petitioners departure from Sri Lanka on overseas leave from the 15th to the 20th December 2015, was prior to the approval of his leave application marked P 7a, by the Secretary, Ministry of Agriculture, who is the authority to grant or refuse leave to the Petitioner. This is indicative by letter dated 14/12/2015, marked P18. Document marked P8, has been issued to the Petitioner by the Director of the Sri Lanka Council for Agriculture Research Policy, where the Petitioner served as the Secretary, has no authority to grant leave to the Petitioner. Therefore, document marked P8, issued to the visa officer of the relevant embassy with reference to grant of leave has no validity and cannot in any way construe the grant of overseas leave by the relevant authority.

In the circumstances, I hold that the Petitioner has failed to establish any legal basis to challenge, vacation of post as contained in documents marked P11 and P20, and therefore, the reliefs prayed for is denied.

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