

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

Aluthgedera Ganaratne,
Nilhena,
Baddegama.
Petitioner

CASE NO: CA/55/2015/WRIT

Vs.

1. Director of Education,
Human Resources Development,
Ministry of Education,
"Isurupaya",
Battaramulla.
2. Secretary,
Ministry of Education,
"Isurupaya",
Battaramulla.
3. Deputy Director of Education,
Zonal Education Office,
Galle.
4. Chief Secretary,
Chief Secretary's Office,
S.H. Dahanayake Mawatha,
Galle.

5. Director General of Education,
Ministry of Public Administration
and Home Affairs,
Colombo 7.
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Chula Bandara for the Petitioner.

Chaya Sri Nammuni, S.C., for the Respondents.

Argued on : 11.06.2018

Written Submissions:

By the Petitioner on 30.07.2018

By the Respondents on 13.08.2018

Decided on: 11.09.2018

Samayawardhena, J.

The petitioner, graduate teacher, was granted full pay study leave initially from 01.02.1991-01.02.1994 and then from 02.02.1994-31.01.1995 to complete his PhD. The thesis submitted by him was rejected by the University. Thereafter the respondents decided to recover the salary paid to the petitioner during that period. The petitioner has filed this application seeking to quash that decision by way of writ of certiorari.

Paragraphs 14:4 (Chapter XII) and 4:12 (Chapter XV) of the Establishment Code provide as follows:

14:4 An officer who is granted full pay study leave should be required to enter into an Agreement before he is allowed to proceed on leave.

4:12 The form of Agreement and Bond to be used is set out in Appendices 8 (Agreement) and 15 (Bond).

The petitioner has tendered a specimen of the said Agreement marked P2 and a copy of the signed Bond marked P3.

According to paragraph (I) at page 2 of the Bond P3, unless the course of study to which paid leave was granted is completed to the satisfaction of the 1st respondent, the petitioner shall reimburse the money paid to him during the said period.

It is the submission of counsel for the respondents that when the petitioner failed to successfully complete the degree, for the successful completion of which full pay leave was granted, the 1st respondent is entitled to direct the petitioner to reimburse the money in terms of the above condition.

Referring to the said condition in the Bond, counsel for the petitioner on the other hand states that "*completion of the course of study for which full pay study leave was granted*" shall be taken to mean "*to attend lectures and complete the course work*" only, as awarding the PhD to the thesis submitted by the petitioner is a matter for the University and not for the respondents.¹

In the completion of PhD, there are absolutely no lectures to attend and no course work to follow. All what a PhD student shall do is to submit the thesis at the end of his research. The thesis submitted by the petitioner has been rejected by the University as it is not up to the standard to be awarded a PhD.

¹ Vide page 10 of the written submissions of the petitioner.

The government paid full pay study leave during his study and if he was unsuccessful in his studies, the 1st respondent as per the Bond is in my view entitled to come to the conclusion that the course of study for which full pay study leave was granted was not completed to his satisfaction and therefore the grantee shall reimburse the money paid to him by the government.

No room shall be left to misuse the privileges granted to public officers by the Establishment Code such as granting long term paid study leave for the successful completion of postgraduate studies for the greater benefit of the public service.

The decision taken by the respondents is in my view not illegal, irrational or improper.

In any event, certiorari is a discretionary remedy. It cannot be sought as of right. Even assuming without conceding that the decision sought to be challenged is illegal, irrational or improper, if the other circumstances do not warrant granting the relief, the Court can refuse the relief.

In this matter, the petitioner being a government teacher, apart from taking full pay three year study leave, and then one year study leave, which ended on 31.01.1995, has repeatedly taken excessive leave thereafter. For instance, as per paragraph 14(x) of the statement of objections of the 1st and 2nd respondents, the petitioner has reported to work for only 23½ days in the year 1996 after taking study leave for four long years. That example shows his commitment to his noble profession.

The amount to be recovered is another factor which the Court can take into account. As I understand, according to paragraph 14(xxii) of the statement of objections, as the petitioner has now

retired, only a sum of Rs. 56,156/72 could now be recovered from the petitioner out of his pension.

Application of the petitioner is dismissed but without costs.

Judge of the Court of Appeal