

**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 Writs of
Certiorari under and in terms of Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

C.A (Writ) Application No: 241/2018

Ranjith Upali Wasantha Kumara
Dissanayake,
No. 492/A, 'Mahagedara',
Halgahawela, Minuwangoda.

Petitioner

Vs.

1. The People's Bank,
No. 75, Sir Chittampalam A Gardiner,
Mawatha, Colombo 2.
2. Hemasiri Fernando,
Chairman,
People's Bank.
3. N. Vasantha Kumara,
Chief Executive Officer/General
Manager,
People's Bank.

4. M.A.B. Silva,
Senior Deputy General Manager
(Banking Operations),
People's Bank.
5. S.A.R.S. Samaraweera,
Deputy General Manager,
(Human Resources),
People's Bank.
6. T.D. De. Z. Gunawardena,
Assistant General Manager,
(Inquiries and Investigations)
People's Bank.
7. W.A. Wasantha Kumara,
Chief Manager,
(Human Resources),
People's Bank.
8. M.M.A. Rizmi,
Chief Manager,
(Inquiries and Investigations)
People's Bank.

All of No. 75, Sir Chittampalam A
Gardiner Mawatha, Colombo 2.

9. D.V.K. Rathnayake,
Regional Manager (Gampaha),
People's Bank Regional Head Office,
Balummahara, Gampaha.
10. Jehan P. Amaratunga,
Director, People's Bank.
11. G.D.C. Ekanayake,
Director, People's Bank.
12. Felician Perera,
Director, People's Bank.
13. Krish Rajendra,
Director, People's Bank.
14. Anton Hemantha,
Director, People's Bank.
15. Aminda Perera,
Director, People's Bank.
16. Mohan Wijesinghe,
Director, People's Bank.

All of No. 75, Sir Chittampalam A
Gardiner Mawatha, Colombo 2.

Respondents

Before: P. Padman Surasena J, President of the Court of Appeal
Arjuna Obeyesekere J

Counsel: Upul Kumarapperuma with Ms. Sharleen Fernando for
the Petitioner

Ms. Manoli Jinadasa with Ms. Shehara Karunaratne for
the 1st Respondent

Written Submissions: Tendered by the Petitioner on 5th November 2018

Tendered by the 1st Respondent on 23rd October 2018

Decided on: 12th November 2018

Arjuna Obeyesekere, J

When this matter was taken up for support on 3rd October 2018, the learned Counsel for the 1st Respondent People's Bank raised a preliminary objection to the maintainability of this application on the basis that the dispute which is the subject matter of this application arises from a contract of employment and is therefore outside the Writ jurisdiction of this Court. The learned Counsel for the Petitioner and the 1st Respondent undertook to file written submissions setting out their respective positions relevant to this application and moved that this Court pronounce the Order on whether notices should be issued, on the said written submissions.

The Petitioner has filed this application, seeking *inter alia* the following relief:

- a) Writs of Certiorari to quash the decision taken by the 7th Respondent to issue the Petitioner with letters of warning, annexed to the petition marked 'P12' and 'P25';
- b) Writs of Certiorari to quash the decision taken by the 6th Respondent to reject the appeals of the Petitioner, as reflected in the letters annexed to the petition marked 'P16' and 'P27'.

The facts of this matter very briefly are as follows.

The Petitioner had been appointed to Clerical – Grade I of the 1st Respondent People's Bank in 1995. Having received several promotions over the years, the Petitioner is presently working as a Manager attached to the International Banking sector of the 1st Respondent. While the Petitioner was functioning as the Manager of the Ganemulla Branch of the 1st Respondent, the Petitioner was served with a letter dated 27th March 2017, annexed to the petition marked 'P7', asking him to show cause why disciplinary action should not be taken against the Petitioner for several acts of misconduct referred to the said letter, alleged to have been committed by the Petitioner. The Petitioner states that he replied¹ this letter denying the accusations made against him in 'P7'.

¹ Letter dated 6th April 2017 has been annexed to the petition marked 'P8'.

The Petitioner had thereafter been asked to report to the Inquiries and Investigations Department of the 1st Respondent 'to record a statement with regard to the inquiry which was held against him for the aforementioned alleged misconduct'. After recording the statement, the Petitioner had been transferred to the Corporate Banking Division. The Petitioner had thereafter been served with a charge sheet dated 3rd August 2017², which the Petitioner replied by letter dated 8th August 2017³. The Petitioner states that by letter dated 3rd October 2017, annexed to the petition marked 'P12' the Petitioner had been issued with a warning⁴ as he had been found guilty of the charges leveled against him. Dissatisfied with 'P12', the Petitioner has submitted an appeal⁵, which had been rejected by letter dated 11th June 2018, annexed to the petition marked 'P16'.

The Inquiries and Investigation Department of the 1st Respondent had recorded another statement from the Petitioner in July 2017, pursuant to which the Petitioner had been served with a letter dated 14th July 2017⁶, asking him to show cause why disciplinary action should not be taken against the Petitioner for several acts of misconduct referred to in the said letter. Although the Petitioner had tendered his reply, the 1st Respondent had served the Petitioner with a charge sheet⁷, which too the Petitioner states he replied⁸, denying the charges made against him. The Petitioner states that by letter dated 29th November 2017, annexed to the petition marked 'P25', the Petitioner had been issued with a

² Annexed to the petition marked 'P10'.

³ Annexed to the petition marked 'P11'.

⁴ මේ මගින් මධ්‍ය අවමය කරමි

⁵ Annexed to the petition marked 'P15'.

⁶ Annexed to the petition marked 'P21b'.

⁷ The Charge Sheet dated 12th September 2017 is annexed to the petition, marked 'P23'.

⁸ Letter dated 9th October 2017 is annexed to the petition, marked 'P24'.

severe warning⁹ as he had been found guilty of the charges leveled against him. Dissatisfied with 'P25', the Petitioner has submitted an appeal¹⁰, which had been rejected by letter dated 9th May 2018, annexed to the petition marked 'P27'.

Aggrieved by the issuing of the letters of warning and the rejection of his appeals, the Petitioner has invoked the Writ jurisdiction of this Court seeking the aforementioned Writs of Certiorari on the basis that the 1st Respondent failed to conduct an inquiry prior to issuing the Petitioner with the said letters of warning and that he has been denied an opportunity of being heard.

Before considering the merits of the Petitioner's case, this Court would consider the preliminary objection raised by the learned Counsel for the 1st Respondent.

The 1st Respondent has been established by the People's Bank Act No. 29 of 1961, as amended (the Act). The purposes for which the 1st Respondent has been established have been set out in Section 4 of the Act. The powers that the 1st Respondent may exercise or perform in carrying out its purposes are set out in Section 5(1) of the Act, of which the following are relevant to this application, and thus, are re-produced below:

“(s) to employ such officers and servants as may be necessary for carrying out the work of the Bank;

⁹ සිද්ධිය අනාවරණය වූ දින සිට තරයේ අවවාද කරමු

¹⁰ Annexed to the petition marked 'P26a'.

(t) to make rules in respect of the conditions of service and for the disciplinary control of the officers and servants of the Bank;

(u) to enter into contracts.”

The gravamen of the preliminary objection raised by the learned Counsel for the 1st Respondent is that disciplinary action taken by the 1st Respondent is pursuant to the provisions of the Contract of employment between the Petitioner and the 1st Respondent and that there is no statutory flavour attached to the said contract of employment, which would bring the complaint of the Petitioner within the writ jurisdiction of this Court. The position taken up by the learned Counsel for the Petitioner is that the power of the 1st Respondent to take disciplinary action in terms of the Disciplinary Code annexed to the petition marked 'P13' flows from the power conferred by Section 5(1) (s) and (t) of the Act and that this statutory nexus is sufficient to bring the decisions taken by the 1st Respondent against the Petitioner within the Writ jurisdiction of this Court.

The 1st Respondent being a creature of statute, its powers must necessarily be conferred by statute. The 1st Respondent cannot exercise any powers not conferred on it by its incorporating Act. The powers referred to above are powers that are required to enable the smooth functioning of the 1st Respondent. The Petitioner has a contract of employment¹¹ with the 1st Respondent and the terms and conditions relating to his appointment, including salary, promotions, benefits,

¹¹ Although the Petitioner has annexed a letter of appointment marked 'P1a', it is observed that the terms and conditions referred to therein, have not been produced with the petition.

disciplinary control and termination of services will be governed by the said Contract of Employment. The fact that the appointment of the Petitioner has been made by the 1st Respondent in the exercise of the general powers conferred on it by the Act to employ such officers and servants as may be necessary for carrying out the work of the Bank and in order to achieve the purposes set out in the Act, does not make the appointment of the Petitioner a statutory appointment.

Similarly, the fact that the Act empowers the 1st Respondent to make rules in respect of the disciplinary control of the officers and servants of the Bank and the fact that the Disciplinary Code marked 'P13' has been made in the exercise of that power¹² does not mean that steps taken in the exercise of the disciplinary control of the employees falls within the provisions of the Act or are an exercise of statutory authority by the 1st Respondent. This Court observes that the Act does not deal with the calling of explanations, issuing of charge sheets, issuing of warning letters etc, and that all these steps are taken as part of the disciplinary control that the 1st Respondent has over the Petitioner in terms of the contract of employment.

In these circumstances, this Court is of the view that the disciplinary action taken against the Petitioner has been done under and in terms of the contract of employment that the Petitioner has with the 1st Respondent and not under any provisions of the People's Bank Act. As such, the Writ of Certiorari would not be

¹² The 1st Respondent has published the Disciplinary Code annexed to the petition marked 'P13' in terms of the power conferred on it by the Act.

available to remedy any grievance arising from an alleged failure to observe the principles of natural justice.

The preliminary objection raised by the learned Counsel for the 1st Respondent has been considered in a series of cases over the years and this Court would like to advert to the following judgments.

In Gawarammana Vs Tea Research Board and others¹³ Sripavan J (as he then was) cited with approval the following passage of Thambiah J in Chandradasa v Wijeratne¹⁴.

"No doubt the competent authority was established by statute and is a statutory body. But the question is, when the respondent as competent authority dismissed the petitioner, did he do so in the exercise of any statutory power? The Act does not deal with the question of dismissal of employees at all. It does not specify when and how an employee can be dismissed from service, the grounds of dismissal or the procedure for dismissal. So that, when the respondent made his order of dismissal, he did so in the exercise of his contractual power of dismissal and not by virtue of any statutory power. If the petitioner's dismissal was in breach of the terms of the employment contract, the proper remedy is an action for declaration or damages. The Court will not quash the decision on the ground that natural justice has not been observed."

¹³ 2003(3) Sri LR 120 at 122.

¹⁴ 1982 (1) Sri LR 412 at 415 and 416.

Sripavan J thereafter held as follows:

“The powers derived from contract are matters of private law. The fact that one of the parties to the contract is a public authority is not relevant since the decision sought to be quashed by way of Certiorari is itself was not made in the exercise of any statutory power.”¹⁵

The facts of this case are similar to Chandradasa’s case and this Court is in agreement with the observations of Thambiah J and Sripavan J.

The learned Counsel for the 1st Respondent has cited two judgments of this Court that dealt with the same Disciplinary Code as in this application. In U.L. Karunawathie vs People’s Bank and others¹⁶ the petitioner sought a writ of Certiorari to quash the decision of the Bank to withhold part of the gratuity due to the petitioner on the basis that it had done so even without holding a preliminary or formal inquiry. The position taken up by the Bank that the dispute comes within the terms of the contract of employment and therefore outside the writ jurisdiction of this Court was upheld by this Court which held that the ‘bank had no public duty to perform towards the petitioner since the matter complained of comes within the contract of employment’.

In A. R. A. Sathar vs People’s Bank¹⁷, the Petitioner’s services had been terminated by the Bank after a disciplinary inquiry. At the hearing of the said

¹⁵ Supra. page 124.

¹⁶ C.A (Writ) Application No. 863/2010; CA Minutes of 12th May 2015.

¹⁷ C.A (Writ) Application No. 195/2008; CA Minutes of 12th December 2012.

application, the identical objection as in this application was taken. This Court, having referred to several previous judgments¹⁸ on this matter, held that the relationship between the employer and employee is of a contractual nature and that writ should not lie.

In the above circumstances, this Court upholds the preliminary objection taken by the learned Counsel for the 1st Respondent that the purported complaints of the Petitioner arises out of his contract of employment and that the Petitioner cannot therefore invoke the Writ jurisdiction of this Court. Hence, there is no legal basis for this Court to entertain the application of the Petitioner. The necessity for this Court to consider this matter on its merits therefore does not arise. The application of the Petitioner is dismissed, without costs.

Judge of the Court of Appeal

P. Padman Surasena J/ President of the Court of Appeal

I agree.

President of the Court of Appeal

¹⁸ K.S.De Silva vs National Water Supply and Drainage Board 1989 (2) Sri LR 1; Gawarammana vs Tea Research Board and others (supra).