

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

Balasathu Hewage Suresh
Buddhi Kumara,
No.98,
Light House Road,
Talpavila,
Devinuwara.
Petitioner

CASE NO: CA/WRIT/326/2016

Vs.

1. State Timber Corporation,
No.82,
Rajamalwatta,
Battaramulla.
2. P. Dissanayake,
Chairman,
State Timber Corporation,
No.82,
Rajamalwatta,
Battaramulla.
- 2A. Shantha Bandara,
Chairman,
State Timber Corporation,
No.82,
Rajamalwatta,
Battaramulla.

3. Pawara Kumara,
Working Director,
State Timber Corporation,
No.82, Rajamalwatta,
Battaramulla.
4. K. Sirinivasa,
General Manager,
State Timber Corporation,
No.82,
Rajamalwatta,
Battaramulla.
- 4A. Nimal Ruwan Pathirana,
General Manager,
State Timber Corporation,
No.82, Rajamalwatta,
Battaramulla.
5. M.V. Karunaratne,
6. P. Pansalwatte,
7. A.M.C. Perera,
Members of the Board of
Directors,
State Timber Corporation,
No.82,
Rajamalwatta,
Battaramulla.
8. Hon. Attorney-General,
Attorney-General's Department,
Colombo 12.

Respondents

Before: Mahinda Samayawardhena, J.
Counsel: Razik Zarook, P.C., with Rohana Deashapriya for
the Petitioner.
Ganga Wakista Arachchi, S.S.C., for the
Respondents.

Decided on: 11.12.2018

Samayawardhena, J.

The petitioner filed this application seeking a mandate in the nature of a writ of certiorari seeking to quash P13 and P14.

The petitioner was a Field Officer Grade I of the 1st respondent-State Timber Corporation. After a disciplinary inquiry on an allegation that there had been irregularities in removing trees on Haputale-Diyatalawa road, he was found guilty for three charges, and disciplinary actions were taken against him—vide P8. They are: (a) not to pay arrears of salary during the period of his interdiction; (b) demote from Field Officer Grade I to Field Officer Grade II, and to place at the initial salary scale of Grade II; and (c) severe warning.

The petitioner has, as he was entitled to do, appealed against that order by P9. Having considered that appeal, the 2nd respondent who was the Chairman of the 1st respondent (with the agreement of the 4th respondent-General Manager) has, by P10 dated 07.05.2015, lessened a part of the punishment whereby the (b) above was amended to read as “demote from Field Officer Grade I to Field Officer Grade II and place in the salary scale of Rs.18,700/= effective from 03.03.2015.”

Thereafter, the same Chairman by letter marked P13 dated 30.06.2016, has cancelled the above appeal decision contained in P10 on the basis that the Government Auditor (in R1) has pointed out such lessening of punishment is not permitted. (ඒ අයුරින් දඬුවම් ලිහිල් කිරීමට නොහැකි වන බව රජයේ විගණකාධිපති විසින් පෙන්වා දී ඇති බැවින්, සමාංක හා 2015.05.07 දිනැති ලිපිය මින් අවලංගු කරමි.)

This in my view is completely unwarranted. According to clause 25.7 of the Disciplinary Code of the 1st respondent Corporation marked P6, the decision of the appellate body is final. According to clause 26.4, the appellate body is, *inter alia*, permitted to consider the appeal on compassionate grounds. The Government Auditor cannot compel the appellate body to withdraw the appeal decision.

In any event, in my view, what is stated in the Auditor's Report R1 is not factually correct. On the first page of R1, it is stated that an appeal against a disciplinary order made by the General Manager should have been presented to the Board of Directors and therefore the petitioner's appeal directed to the General Manager should have been rejected. This is not correct. The petitioner is not an executive officer. He is only a Field Officer. According to clause 3.3 of the Disciplinary Code P6, the appeal officer/appellate body in respect of employees who are not in the executive grade is the Chairman. The Board of Directors becomes the appellate body in respect of executive grade officers. R1 also says that the appeal had been amended by the General Manager without submitting it to the Chairman. It is not clear what is meant by it. Appeal decision P10 has been signed by the Chairman. R1 further says that by P10, the original punishment contained in P8 has indirectly been minimized.

There is nothing wrong in minimizing the punishment, and that is the very purpose of the appeal.

The learned senior state counsel in the written submissions says that “*the 2nd respondent (the Chairman) is at all times material to the execution of his duties is bound to adhere to the observations of the Auditor General and further an illegal decision cannot be legalized by a subsequent act and hence no legitimate expectation could exist in the instant application.*” I cannot understand what is meant by “the Chairman is bound to adhere to the observations of the Auditor General” and on what basis that statement is made. In my view, observations made on incorrect facts need not be taken serious note of. I further cannot understand on what basis the learned senior state counsel says that the appeal decision P10 is “an illegal decision”. I see no illegality in P10. With respect, I also fail to comprehend the argument of the learned senior state counsel that “*no writ lie for a dispute between an employer and employee relationship.*” The petitioner has invoked the writ jurisdiction of this Court against an administrative decision.

I quash the decision contained in P13. I also quash P14 which flows from P13. Appeal decision P10 shall prevail.

Application is allowed. No costs.

Judge of the Court of Appeal