

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 and Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

C A (Writ) Application No. 318/ 2018

H A D Dharmasiri,

No. 354/2,

Jayanthi Mawatha,

Himbutana,

Angoda.

PETITIONER

-Vs-

1. Secretary,

Administrative Appeals Tribunal,

No. 35,

Silva Lane,

Dharmapala Place,

Rajagiriya.

2. Secretary,

Public Service commission,

Rajamalwatta Road,

Battaramulla.

3. General Manager,

Department of Railways,

Maradhana,

Colombo 10.

4. Hon. Attorney General,
Attorney General's Department,
Hulftsdorp Street,
Colombo 12.

RESPONDENTS

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

Arjuna Obeyesekere J

Counsel: Petitioner appears in person.

Supported on : 2018 - 10 - 25.

Decided on : 2018 - 12 - 12.

ORDER

P Padman Surasena J (P/CA)

Court heard the petitioner who appeared in person, in support of his application.

The Petitioner prays from this Court following relief;

- i. An order staying the effect of the order made by the Administrative Appeals Tribunal dated 2018-07-17 dismissing the appeal of the Petitioner,
- ii. An order staying the effect of the order made by the Director of Combined Services dated 2010-01-05 and 2010-01-12,
- iii. An order staying the effect of the order made by the Secretary – Public Administration dated 2011-04-28,
- iv. An order to pay back wages.

At the outset, this Court notes that the Petitioner, although stated in the caption of his petition, that the instant application is one filed under Article 140 of the Constitution, has not specified in the prayers, the nature of the writs he expects from this Court. Therefore, it is not possible for this Court to consider and evaluate the merits of his application. This is because the proof of ingredients required for the issuance of a writ would vary on the nature of the writ to be issued.

In the case of Dayananda Vs. Thalwatta¹ this Court has held as follows.

"... An aggrieved person who is seeking to set aside an unfavourable decision made against him by a public authority could apply for a prerogative writ of certiorari and if the application is to compel an authority to perform a duty he would ask for a writ of mandamus and similarly if an authority is to be prevented from exceeding its jurisdiction the remedy of prohibition was available. Therefore it is necessary for the Petitioner to specify the writ he is seeking supported by specific averments why such relief is sought. Even though the Petitioner has set out in the caption that "in the matter of an application... for writ of quo warranto and prohibition"

¹ 2001 2 SLR at page 73

there is no supporting averment specifying the writ and there is no prayer as regards the writ that is being prayed for. The failure to specify the writ therefore renders the application bad in law "

Apart from the absence of any specific prayer in the instant petition, the Petitioner in the instant application has also neither made any reference to any specific writ nor has made out any valid ground for the issuance of any specific writ in the averments of the petition.

Moreover, this Court also notes that the Petitioner in his application has not averred that he has not previously invoked the jurisdiction of this Court in connection with this matter.

Provisions, which insist that any application shall contain an averment that the jurisdiction of the Court of Appeal has not previously been invoked, is found in rule 3 of the Court of Appeal (Appellate Procedure) Rules 1990.

According to the said rule, any application under Article 140 of the Constitution must contain an averment that the jurisdiction of the Court of Appeal has not previously been invoked in respect of the same matter. The phrase "*....shall contain an averment ...*" shows that the rule has made the inclusion of such an averment in the petition mandatory. This Court in

numerous applications has held that the compliance of this requirement is mandatory.

Rule 3 (2)² states as follows:

"... The petition and affidavit, except in the case of an application for the exercise of the powers conferred by Article 141 of the Constitution shall contain an averment that the jurisdiction of the Court of Appeal has not previously been invoked in respect of the same matter. If such jurisdiction has previously been invoked the petition shall contain an averment disclosing relevant particulars of the previous application. Where any such averment as previously mentioned is found to be false or incorrect the application may be dismissed. ... "

The jurisdiction to issue writs in the nature of certiorari and Mandamus which is vested in this Court by virtue of Article 140 of the Constitution is a jurisdiction, which this Court could decide in its discretion to exercise in a fit case. In the above circumstances, this Court is not inclined to entertain the instant application.

² Court of Appeal (Appellate Procedure) Rules 1990.

In these circumstances, this Court decides to refuse to issue notices on the Respondents.

This Application should therefore stand dismissed without costs.

PRESIDENT OF THE COURT OF APPEAL

Arjuna Obeyesekere J

I agree,

JUDGE OF THE COURT OF APPEAL