



Counsel: Chamantha Weerakoon Unambuwa for the  
Appellant.  
Nuwan Pieris, S.C., for the Respondents.

Decided on: 20.06.2019

Mahinda Samayawardhena, J.

Whilst serving as the Accountant of the Provincial Road Development Authority of the North Central Province, the appellant's services were suspended by X7 pending investigation into wrongful payments disclosed by an Audit Report. The appellant rushed to the High Court seeking to quash the said suspension by certiorari and an order for reinstatement by mandamus. The High Court by Judgment dated 30.10.2014 dismissed that application. It is against that Judgment the appellant has preferred this appeal.

In the meantime, the disciplinary inquiry has been concluded, and upon found guilty for the charges, his services have been terminated (vide Y3). Thereafter upon an appeal preferred against the said termination (vide Y5), the appellant has been reinstated, but denied payment of salary during the period of suspension (vide Y4).

The appellant tendered those documents by way of a motion, but did not seek to amend the original petition or reliefs.

During the course of argument, the learned counsel for the appellant informed Court that all what the petitioner now needs is to lift the suspension in order to be entitled to collect arrears of the salary during the period of suspension.

The whole application of the appellant in my view is misconceived in law. The disciplinary procedure for the employees of the Provincial Road Development Authority of the North Central Province is contained in Part II of the Gazette marked X8. According to paragraph 2.1 thereof the disciplinary authority of the Provincial Road Development Authority of the North Central Province is the General Manager. According to paragraph 17 thereof, the General Manger can suspend the services of an employee pending investigation. The services of the appellant have been suspended by the General Manager. If the appellant was dissatisfied with that suspension order, he ought to have, in terms of paragraph 13 of X8, appealed to the Secretary of the relevant Ministry of the North Central Provincial Council, and, if he was dissatisfied with that Appeal decision, he ought to have appealed to the Labour Tribunal against that order. He cannot rush to the High Court seeking to quash the suspension order by certiorari. The dismissal of the application of the appellant by the High Court is flawless.

The appellant is now playing a hide and seek game. He does not want to amend the original petition or the reliefs sought. It appears that he accepts the Appeal decision marked Y4 by which he was reinstated, but indirectly attacks the qualification contained therein by which he was denied arrears of salary during the period of suspension of service. If the appellant is dissatisfied with the said Appeal decision, it appears to me that, he shall go before the Labour Tribunal, as provided in paragraph 13.6(b) of X8. In any event, the appellant does not seek any relief on Y4.

I unhesitatingly dismiss the appeal with costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal