

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

R.M. Karunaratne Banda,
No. 95/1,
Kahawatte,
Ambatenne.
Appellant

CA CASE NO: CA (PHC) 54/2014

HC CASE NO: HC/KANDY/WR/25/2012

Vs.

1. Secretary,
Provincial Ministry of Health and
Indigenous Medicine of the
Central Province,
Provincial Ministry of Health,
Sangaraja Mawatha,
Kandy.
2. Director of Health Services,
Provincial Department of Health
of the Central Province,
Sangaraja Mawatha,
Kandy.

Respondents

Before: K.K. Wickramasinghe, J.
Mahinda Samayawardhena, J.

Counsel: Lal Wijenayake for the Appellant.
Yuresha Fernando, S.S.C., for the
Respondents.

Decided on: 21.06.2019

Mahinda Samayawardhena, J.

The petitioner filed an application in the High Court seeking to compel the respondents to implement the orders of the Public Service Commission of the Central Provincial Council contained in X7 and X10 by writ of mandamus. X7 relates to the assumption of duties of the petitioner in his new post and X10 to the unpaid salary. According to the proceedings of the High Court dated 18.09.2013 (at page 56 of the brief), the petitioner has dropped the claim on X7 and confined his relief only to X10. The learned High Court Judge by Judgment dated 23.05.2014 has refused to grant that relief. It is against that Judgment, the petitioner has filed this appeal.

By X10 dated 26.10.2010 (at page 91 of the brief), the Secretary of the Public Service Commission of the Central Provincial Council has informed the Secretary of the Provincial Ministry of Health to pay the petitioner his salary. It is common ground that this is to the period between 10.03.2008-28.01.2009, during which the petitioner did not report for work without prior approval. Thereafter the Secretary of the Provincial Ministry of Health by R11 dated 27.06.2011 (at page 116 of the brief) has

sought further instructions from the Secretary of the Public Service Commission of the Central Provincial Council regarding payment of salary during that period. In reply, the same Secretary of the Public Service Commission of the Central Provincial Council, who issued X10, has, by R9 dated 08.07.2011 (at page 114 of the brief), informed the Secretary of the Provincial Ministry of Health not to pay the salary during the period which the petitioner abstained from work without prior approval. This has been informed to the petitioner by the Secretary of the Provincial Ministry of Health by X12 dated 20.07.2011 (at page 92 of the brief). The petitioner does not challenge R9, nor has he made the Secretary of the Public Service Commission of the Central Provincial Council a party to the application. In the circumstances I cannot understand why and how the petitioner files this application seeking the Court to force the respondents to implement the decision in X10. There is no basis for this application.

The mandamus sought is clearly misconceived in law. Appeal is dismissed with costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal