

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

K.D.R.S.S. Rupananda,
Hangawa,
Thorayaya.
And 13 Others.
Petitioner-Appellants

CA CASE NO: CA (PHC) 86/2015

HC CASE NO: NWP/HCCA/KUR/07/2012/W

Vs.

1. The Secretary,
Chief Secretary's Office,
North Western Province,
1st Floor,
Provincial Council Office Complex,
Kurunagala.
2. The Secretary,
Ministry of Health, Indigenous
Medicine, Sports and Youth Affairs
(North Western Province),
3rd Floor,
Provincial Council Office Complex,
Kurunegala.
And 2 Others
Respondents-Respondents

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

Counsel: Sapumal Bandara for the Appellant.
Kanishka de Silva, S.S.C., for the Respondents.

Decided on: 02.07.2019

Mahinda Samayawardhena, J.

The petitioners filed this application against the respondents in the High Court seeking a mandate in the nature of writ of mandamus compelling one or more or all of the respondents to release the petitioners from the combined service of drivers of the North Western Provincial Public Service and absorb them to the Ministry of Health of the said Province. The High Court refused to grant the relief. This appeal by the said petitioners is from that Judgment.

Drawing attention of the Court to P1-P6, the petitioners say that they were given a legitimate expectation that they would be recruited as drivers of the Ministry of Health of the said Province and not to the Combined Service of the Drivers of the North Western Provincial Public Service.

However they admit that they were given appointments as Drivers of Class II(b) in the Combined Service of the Drivers of the North Western Provincial Public Service, and not as Drivers of the Ministry of Health. The former is not a closed service whereas the latter is. These appointment letters have been given by the Chief

Secretary of the Province on 01.01.2007. The petitioners have accepted those appointments made by letters marked P7(1)-(14).

The petitioners state that (a) they made several requests to the 1st and 2nd respondents to release them from the Combined Service to the Health Ministry, and (b) then they were informed that it would be rectified when their services would be made permanent. There is no documentary proof to support either of them. The respondents in their objections deny both those matters. When facts are in dispute, needless to say that, mandamus cannot go. This Court has no wherewithal to look into the accuracy of those assertions and then make a suitable order. This Court will decide whether or not to issue mandamus on the facts which are undisputed.

Thereafter the petitioners have been made permanent in the same post, i.e. Drivers of Class II(b) in the Combined Service of the Drivers of the North Western Provincial Public Service, effective from the date of appointment, i.e. 01.01.2007. This has been done by the Chief Secretary of the Province by letters marked P9(1)-(12) issued in 2010 and 2011.

The petitioners have filed this application in the High Court in 2012.

When the respondents deny that they promised the petitioners that the petitioners would be absorbed to the Health Ministry from Combined Service when permanent appointments are made, I need hardly emphasize that the petitioners are clearly guilty of lashes when they decided to invoke the writ jurisdiction of the Provincial High Court to challenge the appointment letters issued in 2007, in the year 2012. Writ is a discretionary remedy and will not be

available to those who are dormant in their conduct to claim what they think is legally entitled to them.

This leads me to consider whether the petitioners are legally entitled to the relief which they say denied to them by the respondents. To issue mandamus, the petitioners must show that they have a legal right, with the corresponding legal duty on the part of the respondents, to be absorbed to the Health Ministry from Combined Service, which has unreasonably been withheld by the latter.

I have no doubt that there is no such right accrued to the petitioners and there is no such duty to be performed by the respondents.

The petitioners cannot have legitimate expectation of being confirmed in any post other than the post to which they have been initially appointed.

The petitioners have also drawn the attention of the Court to P10(1) and (2) to say that two other individuals similarly circumstanced were recruited in 2007 straight as Drivers to the Health Ministry. It is not clear on what basis those two were so recruited and also they are not parties to this application at least for notice. That might give rise to a cause of action to file a fundamental right application on discrimination but that will not create a legal right in favour of the petitioners for this Court to compel the respondents by mandamus to absorb the petitioners to the Health Ministry as Drivers.

Appeal is dismissed without costs.

Judge of the Court of Appeal

K.K. Wickremasinghe, J.

I agree.

Judge of the Court of Appeal