

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

In the matter of an application for a Mandamus
under Article 140 of the Constitution.

Dehideniya Anura Kumarasinghe
No. 212, Colombo Road, Warakapola.

Petitioner

Vs.

Case No: C. A. (Writ) Application 412/2014

1. D. M. R. B. Dissanayake
The Secretary to the Ministry of Health and
Indigenous Medicine,
Deans Road, Colombo 10.
2. M. A. Perera
The Registrar,
Homeopathic Medical Council,
No. 94, Shelton Jayasinghe Mawatha,
Welisara, Ragama.
3. Honourable Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before: Janak De Silva J.

N. Bandula Karunarithna J.

Counsel:

Nuwan Kodikara for the Petitioner

Manohara Jayasinghe SSC for the 1st and 3rd Respondents

Jude Nanayakkara for the 2nd Respondent

Written Submissions tendered on:

Petitioner on 26.02.2019

1st and 3rd Respondents on 22.01.2019

2nd Respondent on 08.01.2019

Argued on: 13.05.2019

Decided on: 31.07.2019

Janak De Silva J.

The Petitioner is a registered Homeopathic Medical Officer. The Homeopathic Medical Council (Council) appointed the Petitioner as Homeopathic Medical Officer in charge of the free Homeopathic Dispensary at Ranwala, Kegalle with effect from 29.08.2001 (P2). The details of payments and allowance to the staff of the dispensary was informed by the Registrar/Secretary of the Council (P3).

The Petitioner claims that he was working as Homeopathic Medical Officer in charge of the free Homeopathic Dispensary at Ranwala, Kegalle up to the time of filing of this application. He claims that although he was paid the monthly travelling allowance of Rs. 500/= per month he was not paid the approved monthly allowance of Rs. 11,000/= for the period 01.09.2001 to 31.12.2008. The Petitioner prays for a writ of mandamus compelling the 1st and 2nd Respondents to pay the said arrears of payment to the Petitioner for the said period.

A writ of mandamus will be issued only if there is a public or statutory duty. [*De Alwis v. De Silva* (71 N.L.R. 108); *Weligama Multi Purpose Cooperative Society Ltd. v. Chandradasa Daluwatta* (1984) 1 Sri.L.R. 195; *Hakmana Multi Purpose Cooperative Society Ltd. v. Ferdinando* (1985) 2 Sri.L.R. 272; *Piyasiri v. People's Bank* (1989) 2 Sri.L.R. 47; *Sannasgala v. University of Kelaniya* (1991) 2 Sri.L.R. 193 and *Samaraweera v. Minister of Public Administration* (2003) 3 Sri.L.R. 64].

Hohfeld¹ argued that there needs to be an understanding of the true nature of legal conceptions and relations to obviate the difficulties posed by artificial dichotomies and constructs. He pointed out that "right", "duty", "liberty" and "no-right" are connected in a fundamental way with each other. The existence of one brings about the existence of the other. Hofeld identified only jural correlatives and opposites whereas Glanville Williams identified a third set of jural relations which he referred to as jural contradictories. In this situation, the presence of one conception in one party means the absence of the contradictory in the other party.

As S.N. Silva C.J. held (at page 15) in *Urban Development Authority v. Abeyratne and Others* [(S.C. Appeal nos. 85/2008 & 101/2008; S.C.M. 01.06.2009)]:

"Hence, stated in the form of a jural correlative, mandamus would lie when a statutory duty is cast upon a public authority with a correlative right to demand its discharge."

The 1st Respondent to this application is D.M.R.B. Dissanayake, Secretary to the Ministry of Health & Indigenous Medicine. The Petitioner has not established any statutory or public duty which requires him to pay the allowance claimed to the Petitioner.

The 2nd Respondent is M.A. Perera, Registrar, Homeopathic Medical Council. The Petitioner has not established any statutory or public duty which requires him to pay the allowance claimed to the Petitioner.

¹ *Some fundamental legal conceptions as applied in judicial reasoning*, Volumes 23(1913) and 26(1917) of the Yale Law Journal

The letter of appointment P2 shows that the Petitioner has been appointed to the post of Homeopathic Medical Officer in charge of the free Homeopathic Dispensary at Ranwala, Kegalle by the Council. In terms of section 2(2) of the Homeopathy Act No. 7 of 1970 as amended, which is the applicable law when this application was filed, the Council is a body corporate having perpetual succession and may be sued and be sued in that name. Hence the employer of the Petitioner is the Council and any arrears of the monthly allowance must be paid by the Council. The Petitioner is an employee of a statutory entity and not a public officer.

However, even in that context such payment is due to the Petitioner in terms of a contract of employment and not as a public or statutory duty. Contractual duties are not enforceable by a writ of mandamus [*Ratnayake and Others v. C.D. Perera and Others* (1982) 2 Sri.L.R. 451, *Weligama Multi Purpose Co-Operative Society Ltd. v. Chandradasa Daluwatta* (1984) 1 Sri.L.R. 195, *Jayaweera v. Wijeratne* (1985) 2 Sri.L.R. 413, *K.S. De Silva v. National Water Supply and Drainage Board and Another* (1989) 2 Sri.L.R. 1, *National Savings Bank v. Chandrasiri* (1991) 1 Sri.L.R. 91, *Wickramasinghe v. Ceylon Electricity Board and Another* (1997) 2 Sri.L.R. 377, *Jayawardena v. The People's Bank* (2002) 3 Sri.L.R. 17, *Mahanayake v. Chairman, Ceylon Petroleum Corporation and Others* (2005) 2 Sri.L.R. 193].

There is also the question of delay. Petitioner has come to court after more than thirteen years from the date of the alleged first default and more than five years after the end of the period for which the arrears are claimed. The Petitioner has failed to explain the delay.

In *Jayaweera v. Asst. Commissioner of Agrarian Services Ratnapura and another* [(1996) 2 Sri.L.R. 70] Jayasuriya J. held:

" A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief."

In that case relief was refused since there was a delay of over two and half years since making the order challenged. The principle is equally applicable to the issue of a writ of mandamus.

For all the forgoing reasons, the application is dismissed without costs.

Judge of the Court of Appeal

N. Bandula Karunaratna J.

I agree.

Judge of the Court of Appeal