

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

In the matter of an Application under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for mandates in the nature of Writs of Certiorari, Prohibition and Mandamus.

Ranawana Wedaralalage Savitha Chethula  
Keshal Ranawana,  
91, Dewala Road, Pagoda, Nugegoda.

**PETITIONER**

**CA (Writ) Application No: 220/2019**

Vs.

1. C.D. Wickramaratne,  
Inspector General of Police (Acting),  
Police Headquarters, Colombo 1.
2. Deputy Inspector General of Police,  
Greater Colombo,  
Mirihana – Nugegoda.
3. T.M.W.D. Tennakoon,  
Superintendent of Police (then),  
Nugegoda Division (then),  
Mirihana, Nugegoda.
4. Lalitha A. Jayasinghe,  
Senior Superintendent of Police,  
Sabaragamuwa Province.

5. Hon. N.E. Dissanayake,  
Chairman, Administrative Appeals Tribunal.
6. A. Gnanadasan P.C.,  
Member, Administrative Appeals Tribunal.
7. G.P. Abeykeerthi,  
Member, Administrative Appeals Tribunal.  
No. 35, Silva Lane, Rajagiriya.

### RESPONDENTS

**Before:** Yasantha Kodagoda, P.C., J/ President of the Court of Appeal  
Arjuna Obeyesekere, J

**Counsel:** Yalith Wijesurendra for the Petitioner

**Supported on:** 26<sup>th</sup> June 2019

**Written Submissions:** Tendered on behalf of the Petitioner on 8<sup>th</sup> July 2019

**Decided on:** 17<sup>th</sup> September 2019

**Arjuna Obeyesekere, J**

The Petitioner has filed this application seeking *inter alia* a Writ of Certiorari to quash the decision of the 1<sup>st</sup> Respondent, Inspector General of Police to dismiss the Petitioner from the Police Department and the subsequent decision of the Administrative Appeals Tribunal which upheld the decision of the 1<sup>st</sup> Respondent as well as the National Police Commission.

The facts of this matter very briefly are as follows.

By letter dated 6<sup>th</sup> June 2008 annexed to the petition marked 'P1', the Petitioner had been appointed as a Sub Inspector of Police with effect from 20<sup>th</sup> April 2008. In terms of paragraph 2 of 'P1' the period of probation shall be three years. Having completed his period of training, the Petitioner had initially been assigned to the Padukka Police Station. Thereafter, he had been posted to the Athurugiriya Police Station. While serving at the Athurugiriya Police Station, the Petitioner had been granted leave every Saturday to follow a Diploma programme in Criminology at the University of Sri Jayawardenapura. At some point of time, the Petitioner had been posted to the Mulleriyawa Police Station.

While serving at the Mulleriyawa Police Station, a complaint had been made by one Sampath Karunaratne on 30<sup>th</sup> October 2010 that the Petitioner was having an illicit relationship with his wife and that he and his friends had found the Petitioner in his house that day and that they have 'detained' the Petitioner. Following inquiries, the Athurugiriya Police had found the Petitioner at the house of the complainant, tied to a post. Investigations carried out by the Police Department revealed that the Petitioner had made an entry in the Information Book at the Mulleriyawa Police Station that he was leaving the Station to attend lectures at the University of Sri Jayawardenapura. However, inquiries have revealed that, instead the Petitioner had visited the wife of the complainant.

Having conducted a preliminary investigation into this matter, the Police Department had issued the Petitioner a charge sheet dated 14<sup>th</sup> February

2011, annexed to the petition marked 'P15'. This Court has examined 'P15' and finds that all seven charges are based on the Petitioner having made a false entry in the Information Book and thereafter having engaged in an illicit relationship with the wife of the complainant, as well as having taken a sum of Rs. 50,000 from her, thereby violating different sections of the disciplinary code applicable to the Petitioner and thereby bringing the Police Service to disrepute. After an inquiry, where the Petitioner was defended by a retired Police officer and was afforded an opportunity of giving evidence on his behalf, the Inquiry Officer had found the Petitioner 'guilty' of all charges leveled against the Petitioner.<sup>1</sup>

Although the Inquiry Officer had only recommended, by way of punishment, the suspension of salary increments and promotions due to the Petitioner, the Senior Deputy Inspector General in charge of the Petitioner had recommended that the services of the Petitioner be terminated as provided for in Section 24:3:2 of Chapter XLVIII of the Establishments Code, as the Petitioner was still under probation at the time the aforementioned incident occurred.<sup>2</sup> This Court has examined the said provision of the Establishments Code and finds that the said recommendation is in terms of the Establishments Code.<sup>3</sup> The Inspector General of Police had agreed with the said recommendation and by a Disciplinary Order annexed to the petition marked 'P18' terminated the services of the Petitioner.

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<sup>1</sup> The report of the Inquiry Officer has been annexed to the petition, marked 'P16'.

<sup>2</sup> The recommendation has been annexed to the petition marked 'P17'.

<sup>3</sup> Section 24.3.2 relates to the termination of service of an officer serving a period of probation.

Being aggrieved by 'P18', the Petitioner had appealed to the National Police Commission which had dismissed his appeal.<sup>4</sup> The Petitioner had thereafter appealed against the decision of the National Police Commission to the Administrative Appeals Tribunal, which too, by its order 'P21' had dismissed the appeal of the Petitioner subject to exonerating the Petitioner of charge No. 2, on a procedural irregularity. This application has been filed seeking a Writ of Certiorari to quash 'P18' and 'P21'.

The submissions of the learned Counsel for the Petitioner were twofold. His first submission was that although the charge sheet contained seven charges, the Inquiry Officer has found the Petitioner 'guilty' of only three charges. He submitted however that the Senior Deputy Inspector General of Police, the Inspector General of Police, the National Police Commission and the Administrative Appeals Tribunal have all proceeded on the basis that the Petitioner had been found guilty of all seven charges. This, he submitted, was an error on the face of the record and vitiated their finding.

As observed above, all seven charges in 'P15' are based on the Petitioner having made a false entry in the Information Book and thereafter having engaged in an illicit relationship. Charge Nos. 1 - 3 are titled as follows:

Charge 1 - 'අපකීර්තිදායක හැසිරීම',

Charge 2 - 'අනුට අතිකරවීම හා පීඩාකාරී ලෙස හැසිරීම' and

Charge 3 - 'අනුට අතිකරවීම'.

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<sup>4</sup> The decision of the National Police Commission has been annexed to the petition marked 'P20'.

The Inquiry Officer has dealt with Charge Nos. 1, 2 and 3 under the heading 'අපකීර්තිදායක ලෙස හැසිරීම' and found the Petitioner 'guilty' of the said charges. Similarly, Charge No. 4 on 'P15' is titled 'බොරකීම හා අත්ත සභවා කටා කිරීම' and the Inquiry Officer has dealt with this Charge as 'Charge 2' under the same title 'බොරකීම හා අත්ත සභවා කටා කිරීම'. Charge Nos. 5, 6 and 7 are titled 'දුෂිත ක්‍රියා', 'දුෂිත ක්‍රියා' and 'අහිසි හැසිරීම' respectively, and the Inquiry Officer has dealt with these charges under the heading 'අහිසි හැසිරීම'. Thus, the Inquiry Officer has in fact found the Petitioner 'guilty' of all charges, but has grouped the charges under three heads in his conclusion. Having considered the report of the Inquiry Officer marked 'P16', it is clear to this Court that the Inquiry Officer was satisfied that the core offence – i.e. making a false entry and engaging in conduct unbecoming of a Police officer – which was common to all charges, had been established.<sup>5</sup> Although the Inquiry Officer was required to record his conclusions on each charge separately, no prejudice has been caused to the Petitioner by the course of action adopted by the Inquiry Officer in lumping together charges of a similar nature. The Administrative Appeals Tribunal too has proceeded on the basis that the Petitioner has been found guilty of the principal allegation made against him. In these circumstances, this Court does not see any merit with the submission of the learned Counsel for the Petitioner.

The second submission of the learned Counsel for the Petitioner was that the Police Departmental Rules require an Officer on probation to be treated leniently. It does not appear from an examination of the report of the Inquiry Officer marked 'P16' that the Petitioner raised this argument before the Inquiry Officer, or for that matter, before the National Police Commission

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<sup>5</sup> Page 9 of the report marked 'P16'.

and/or the Administrative Appeals Tribunal. Be that as it may, this Court has considered the reports of the Inquiry Officer, the Senior Deputy Inspector General and the Inspector General of Police, and it is clear that they have all taken serious note of the conduct of the Petitioner. Given the nature of the charges leveled against the Petitioner, this Court is in agreement with the following conclusion reached by the Inspector General of Police in 'P18':

“06 ඔබ විසින් සිදු කරන ලද ව්‍යය විරෝධී ක්‍රියාව පොලිස් දෙපාර්තමේන්තුවත්, සමස්ථ වශයෙන් රාජ්‍ය සේවයත් අපකීර්තියට පත් කරන්නක් වන අතර, මෙවැනි නිලධාරියෙකු නැවත සේවයේ පිහිටුවීම අනෙකුත් නිලධාරීන්ට ද වැරදි පූර්වාදර්ශයක් වේ.”

This Court must also note that the decision of the Inspector General of Police is within the powers vested in him by Section 24:3:2 of Chapter XLVIII of the Establishment Code, and therefore the said decision is not *ultra vires* the powers conferred on the Inspector General of Police. This Court is also of the view that the Petitioner has not been dealt with in an inappropriately harsh manner. In these circumstances, this Court cannot agree with the second submission of the learned Counsel for the Petitioner.

There is one other matter that this Court must advert to. Our Courts have consistently held that a person invoking the discretionary jurisdiction of this Court must do so without delay and that any delay must be explained. The decision of the Administrative Appeals Tribunal had been delivered on 11<sup>th</sup> December 2017, whereas this application has been filed in June 2019. The Petitioner states in an affidavit annexed to the petition marked 'P23' that he filed an application in this Court in January 2019 and that the said application was withdrawn with permission to file a fresh application explaining the

reasons for the delay. There is no doubt a long delay in filing the first application. The explanation offered by the Petitioner in 'P23' is that he met with an accident in January 2018 and that he suffered injuries to his right leg and spine, which prevented him from attending to his regular duties until August 2018. The Petitioner has annexed to the petition marked 'P24' a medical certificate issued by a registered Ayurvedic medical practitioner. Quite apart from not specifying even the date of the accident, the Petitioner has not produced any other material to demonstrate that he in fact met with an accident. However, the necessity for this Court to consider the adequacy of the explanation for the delay in invoking the jurisdiction of this Court does not arise in view of the conclusion reached by this Court that there is no merit in this application.

In the above circumstances, this Court does not see any legal basis to issue notices on the Respondents. This application is accordingly dismissed, without costs.

**Judge of the Court of Appeal**

**Yasantha Kodagoda, P.C., J/ President of the Court of Appeal**

I agree

**President of the Court of Appeal**