

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

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

L.M.Ashan Eranga Liyanamana,  
Bowalawatta, Tikkahagoda,  
Uduwe East, Yatiyana, Matara.

**PETITIONER**

Vs.

**CA (Writ) Application No: 178/2019**

- 1) Lt.Gen. Mahesh Senanayake,  
Army Commander,  
Army Headquarters,  
No. 15/5, Baladhaksha Mawatha,  
Colombo 1.
- 2) Hemasiri Fernando,  
Secretary, Ministry of Defence,  
Colombo 3.
- 3) Human Rights Commission of Sri Lanka.
- 4) Dr. Deepika Udagama,  
Chairperson.

- 5) Hamid Gazhali HUssain
- 6) Ambika Sathkunanathan
- 7) Dr. U. Vidanapathirana
- 8) Ramanie Muttwtuwegama.  
Commissioners
- 9) Samantie Jayamanne,  
Secretary.

3<sup>rd</sup> – 9<sup>th</sup> Respondents at  
Human Rights Commission of Sri Lanka,  
No. 14, R.A.De Mel Mawatha,  
Colombo 4.

#### RESPONDENTS

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

**Counsel:** Prinath Fernando for the Petitioner  
Anusha Fernando, Deputy Solicitor General for the 1<sup>st</sup>,  
3<sup>rd</sup> – 8<sup>th</sup> Respondents

**Supported on:** 25<sup>th</sup> September 2019

**Written Submissions:** Tendered by the Petitioner on 11<sup>th</sup> October 2019

**Decided on:** 20<sup>th</sup> December 2019

Arjuna Obeyesekere, J

The Petitioner had joined the Sri Lanka Army on 2<sup>nd</sup> May 2011. The Petitioner states that having entered into an agreement with the Commander of the Sri Lanka Army, the Petitioner had followed a course on X-ray Technology from 20<sup>th</sup> January 2014 – 21<sup>st</sup> January 2016. The Petitioner has not produced a copy of the agreement that he signed, but has produced marked 'P1', a specimen of an agreement that is usually executed when such training is provided. The Petitioner states that in terms of the said agreement, he was required to serve the Sri Lanka Army for a period of 10 years after the completion of the course or else pay a sum of Rs.100,000/= if he was to resign from the Sri Lanka Army prior to the completion of the said period.

The Petitioner has been absent without leave from the Sri Lanka Army since 7<sup>th</sup> April 2016, and continues to remain so. He states that even though he made an application to be discharged from the Sri Lanka Army at the time a general amnesty was offered to all persons who had been absent without leave, the Petitioner had not been considered for such an amnesty.

The Petitioner states further that he made a request that he be discharged from the Sri Lanka Army upon the payment of the course fee, but that his request was turned down by the Sri Lanka Army, by its letter dated 16<sup>th</sup> October 2018 annexed to the petition marked 'P9', which reads as follows:

“ ඔබ සෞඛ්‍ය සේවයට අදාළ වෘත්තීය මට්ටමේ සෙබලෙකු බවට පත් කිරීම සඳහා යුද්ධ නමුදුව වෙනත් මහජන මුදල් වැයකරමින් වැටුප් හා දීමනා, නේවාසික, ආහාර, වෛද්‍ය

පහසුකම් සහ අනෙකුත් සියළුම පහසුකම් සපයා ඇතත්, අදාළ වෘත්තීය පුහුණුව අවසන්ව සේවය කර ඇත්තේ මාස 03 කට අඩු කාලසීමාවක් වේ.

එසේම, ඉහත ජේදය මගින් දක්වා ඇති පරිදි, වෘත්තීයමය පාඨමාලාවන් සඳහා යුද්ධ හමුදාව වෙතින් විශාල මුදලක් වැයකරනු ලබන බැවින් හෙද හා අතුරු වෛද්‍ය වෘත්තීන්ට අයත් සෙබළුන් හට බැඳුම්කර සේවා කාලසීමාව අවසන්වීමට ප්‍රථම නිනොනො (නිවාඩු නොමැතිව සේවයට නොපැමිණීම) හෝ වෙනත් හේතූන් මත අස්වයාමට අනුමැතිය ලබා නොදීමට යුද්ධ හමුදා වෛද්‍ය බලකා රෙජිමේන්තු මන්ත්‍රණ සභාව වෙතින් ප්‍රතිපත්තිය තීරණයක් ගෙන ඇත.”

The Petitioner claims that although his application was refused, Sri Lanka Army had allowed two other Corporals, namely Karunaratne and De Alwis, who were similarly circumstanced as him, to resign under the general amnesty. According to 'P9', Corporal Karunaratne had been sacked from Sri Lanka Army upon a directive by the Ministry of Defence. Corporal De Alwis had been sacked from the Sri Lanka Army on the basis that his services are no longer required. 'P9' goes on to state that “ඉන් අනතුරුව මේ දක්වා වෙනත් කිසිදු වෛද්‍ය වෘත්තීය සෙබළෙකු හට යුද්ධ හමුදාවෙන් අස්ව යාම සඳහා අනුමැතිය ලබාදී නොමැත.”

Aggrieved by the fact that his application for a discharge had been refused while the applications of the above Corporals had been allowed, the Petitioner has complained to the 3<sup>rd</sup> Respondent, the Human Rights Commission of Sri Lanka (HRC).

The power of the HRC to investigate complaints received by it has been set out in Section 14 of the Human Rights Commission Act No. 21 of 1996, and reads as follows:

*“The Commission may, on its own motion or on a complaint made to it by an aggrieved person ..., investigate an allegation of the infringement or imminent infringement of a fundamental right of such person or group of persons caused*

*(a) by executive or administrative action; or*

*(b) as a result of an act which constitutes an offence under the Prevention of terrorism Act. No.48 of 1979, committed by any person.”*

In terms of Section 15(1) of the HRC Act, *“Where an investigation conducted by the Commission under section 14 does not disclose the infringement or imminent infringement of a fundamental right by executive or administrative action or by any person referred to in paragraph (b) of section 14, the Commission shall, record that fact, and shall accordingly inform the person making the complaint within thirty days.”*

By letter dated 29<sup>th</sup> November 2018, annexed to the petition marked ‘**P11**’, the HRC had informed the Petitioner as follows:

*“එම පැමිණිල්ලේ සඳහන් කරුණු අප විසින් සැලකිල්ලට ගනු ලැබූ අතර, ඔබ විසින් ඉල්ලා ඇති සහනය ලබා නොදීමට හේතුව ශ්‍රී ලංකා යුධ හමුදාව මගින් ඔබ වෙත එවන ලද 2018.11.16 දින දරණ ලිපිය මගින් දන්වා ඇත. එම ලිපියේ සඳහන් කරුණු අනුව ඔබ ඉල්ලා ඇති සහනය කොමසන් සභාවේ විෂය පථය යටතේ ක්‍රියා කල හැකි කාරණයක් නොවන බවත්, ශ්‍රී ලංකා මානව හිමිකම් කොමසන් සභාව තවදුරටත් මේ සම්බන්ධයෙන් මැදිහත් නොවන බවත් කරුණාවෙන් දන්වමි.”*

Dissatisfied by the said decision in ‘**P11**’, the Petitioner has filed this application, seeking *inter alia* the following relief:

- 1) A Writ of Certiorari to quash the decision in 'P11';
- 2) A Writ of Mandamus directing the HRC to conduct an inquiry into the Petitioner's complaint.

The Petitioner admits that he has been absent without leave since April 2016. Having joined the Sri Lanka Army, and having entered into an agreement to undergo specialised training and thereafter serve Sri Lanka Army for a period of ten years, the Petitioner is now attempting to unilaterally withdraw from the said agreement. The fact that the Sri Lanka Army has sacked two other Corporals, whether similarly placed or otherwise, is irrelevant and does not mean that the Sri Lanka Army must also allow the Petitioner to leave the Sri Lanka Army. As pointed out in 'P9', having spent large sums of money on training the Petitioner, it is important that the services of such trainees are available to the Sri Lanka Army. In this background, this Court does not see any illegality or unreasonableness in the decision of the HRC in 'P11' that the complaint of the Petitioner does not disclose an infringement of the fundamental rights of the Petitioner.

In any event, this Court is of the view that the conduct of the Petitioner in absenting himself from the Sri Lanka Army since April 2016 disentitles the Petitioner to a discretionary remedy such as Writs of Certiorari or Mandamus. This position was upheld in Selvamani vs Dr. Kumaravelupillai and Others<sup>1</sup> where this Court held as follows:

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<sup>1</sup> (2005) 1SLR 99; per Sisira de Abrew J.

*"A person 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 a 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 the above circumstances, this Court does not see any legal basis to issue formal notice of this application 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**