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, Mandamus and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 400/2020

L.P.I.M. Hissalle,
No. 242/2, "Indura",
Koskandawela, Yakkala.

PETITIONER

Vs.

1. Sri Lanka Telecom PLC,
   Lotus Road,
   P.O. Box 503, Colombo 1.

2. Rohan Fernando,
   Chairman.

3. K. Kiththi Perera,
   Chief Executive Officer.

4. Aruna Jayasekara,
   Chief Peoples Officer.

   2nd - 4th Respondents at
   Sri Lanka Telecom PLC,
   Lotus Road,
   P.O. Box 503, Colombo 1.

RESPONDENTS

Before:	**Arjuna Obeyesekere, J / President of the Court of Appeal** **Mayadunne Corea, J**
Counsel:	Ms. Wardani Karunaratne for the Petitioner
	Sanjeeva Jayawardena, P.C., with Dr. Milhan Mohammed for the 1st – 3rd Respondents
	Mohan Weerakoon, P.C., with Prabuddha Hettiarachchi for the 4th Respondent
Supported on:	25th February 2021 and 1st March 2021
Written Submissions:	Tendered on behalf of the Petitioner and 4th Respondent on 4th March 2021
	Tendered on behalf of the 1st – 3rd Respondents on 5th March 2021
Decided on:	10th March 2021

Arjuna Obeyesekere, J., P/CA

The Petitioner has filed this application, seeking *inter alia* the following relief:

a) A Writ of Certiorari to quash the decision of the 1st Respondent, Sri Lanka Telecom PLC contained in letter dated 20th February 2020 marked '**P8**' by which the Petitioner was granted an extension of service for a period of only six months until 18th September 2020;

b) A Writ of Certiorari to quash the decision of the 1st Respondent contained in letter dated 15th September 2020 marked '**P16**' by which the Petitioner was informed that her request for an extension of service until 18th March 2021 has been rejected and that her retirement will take effect from 15th October 2020;

c) A Writ of Certiorari to quash the decision to initiate disciplinary proceedings against the Petitioner;

d) A Writ of Mandamus directing the 1st Respondent to grant the Petitioner an extension of service until 18th March 2021.

The issue that arises for consideration in this application is whether the aforementioned decisions of the 1st Respondent denying the Petitioner an extension of service until 18th March 2021 is illegal, arbitrary and/or unreasonable.

The facts of this matter very briefly are as follows.

The Petitioner had joined the 1st Respondent as an Engineer in 1993. She had subsequently been attached to the Administration and Human Resource Division of the 1st Respondent and had been promoted as a General Manager in 2013. In 2015, the Petitioner had been appointed as the Chief Human Resource Officer. The Petitioner reached the age of 55 years on 19th March 2016.

The parties are in agreement that the optional age of retirement of all employees of the 1st Respondent is 55 years of age, and that the compulsory age of retirement is 60 years. The Petitioner has annexed marked '**P14**' the agreement reached between the 1st Respondent and its Unions on 10th August 2011 where the parties had agreed as follows:

> "ශ්‍රී ලංකා ටෙලිකොම් සේවකයින්ගේ විශ්‍රාම ගැනීම වයස අවුරුදු 55න් පසු වාර්ෂිකව අවුරුදු 60 දක්වා එම සේවකයින්ගේ කාර්යසාධනය, බරපතල විෂමාචාරී ක්‍රියා, පැවැත්ම හා ශාරීරික හා මානසික සෞඛ්‍ය යන කරුණු පදනම්ව සිදු කිරීමට දෙපාර්ශවය එකඟ වේ. කෙසේ වුවද, වයස අවුරුදු 60න් පසුව සේවා දිගු කිරීම් කිසිදු හේතුවක් මත සිදු නොකෙරේ."

The Petitioner states that the retirement policy of the 1st Respondent is set out in Board Paper No. PLC/T/192/2014 dated 17th November 2014. The said Board Paper marked '**P15**' has highlighted the fact that in the absence of a policy relating to the granting of extensions of service to employees from the age of 55 years up to the age of 60 years, the 1st Respondent *has followed all applicable guidelines on the age of retirement issued by the Department of Public Administration upto now*. Accordingly, the practice adopted

by the 1st Respondent had been to grant annual extensions after the age of 55 years at the discretion of the Management. By '**P15**' approval had been sought to implement the criteria contained therein for extensions until the age of 60 years. While in terms of '**P15**', extension of service of Senior Executives such as the Petitioner should be recommended by the Chairman and CEO, and approved by the Board of Directors, any employee who has been found guilty after a disciplinary inquiry and punished for minor or severe misconduct was not eligible for an extension of service.

It is not in dispute that the Petitioner has been granted annual extensions from 19th March 2016 until 18th March 2020 – vide '**P6a**' – '**P6d**'. Approval had been sought by a Board Paper dated 3rd December 2019 marked '**P7**' to extend the services of the Petitioner and several others by a period of one year.

By letter dated 20th February 2020 marked '**P8**', the Petitioner had been informed as follows:

> "*EXTENSION OF SERVICE BEYOND 59 YEARS OF AGE*
>
> *With reference to your letter dated 16th September 2019 in connection with the above, I am pleased to inform you that the Board of Directors has decided to extend your service by a further period of six months. The extended period will initially be for a period of three months commencing from 19th March 2020 to 18th June 2020 until the process of recruitment of the proposed Chief People's Officer ("CPO") is completed and a further three months commencing from 19th June 2020 to 18th September 2020 for the smooth transition of the functions of the position of CHRO to the new CPO*."

I must note at this stage that the Petitioner did not object to the extension being granted for a period of only six months, as opposed to the practice hitherto adopted of granting extensions of one year. The response to '**P8**' came only by letter dated 13th July 2020 marked '**P13**', where the Petitioner informed the 3rd Respondent, the Chief Executive Officer of the 1st Respondent as follows:

"*With reference to my letter dated 16th September 2019, I have requested extension of my service for a period of 1 year with effect from 19th March 2020. But you have extended my service for a period of six months commencing from 19th March 2020.*

I would like to request extension of my service for another six months starting from 19th September 2020."

The above request of the Petitioner was replied by letter dated 15th September 2020 marked '**P16**' where the Petitioner was informed as follows:

"*This has reference to your request for a further service extension through letter dated 13th July 2020. It is with regret that we have to inform you that the Board of Directors have declined your request for a service extension in this instance.* ***They have cited the numerous irregularities that have been elicited through the recently conducted Audit inquiry****, which were communicated to you by the Group Chief Internal Auditor on 2nd March 2020, 20th May 2020 and on 21st August 2020, into several matters that you have handled in your capacity as the CHRO of this company* ***as the main reason for their decision****. As such your retirement from the services of Sri Lanka Telecom PLC will become effective on 15th October 2020.*"

Dissatisfied with the above decision to reject her request for an extension of service until 18th March 2021, the Petitioner filed this application, seeking Writs of Certiorari to quash the decision of the 1st Respondent not to extend her services, and a Writ of Mandamus to grant the Petitioner an extension of service until 18th March 2021.

I must observe at the outset that on the same date as '**P16**', the Petitioner was issued with a letter marked '**P21**' requesting her to show cause in respect of six matters set out therein. The 1st Respondent had thereafter commenced a disciplinary inquiry against the Petitioner, at the end of which the Petitioner has been found guilty of all charges. The necessity to consider the legality of the decision to initiate disciplinary proceedings against the Petitioner therefore does not arise.

It is clear from '**P15**' that an extension of service will not be granted to an employee who has been found guilty of any misconduct after a disciplinary inquiry or where a punishment has been imposed for minor or severe misconduct The learned President's Counsel for the 1st – 3rd Respondents submitted that the procedure set out in '**P15**' has been superseded by the 'Employment Termination Procedure' set out in '**1R12**' introduced on 16th April 2019. The Petitioner has however denied any knowledge of '**1R12**' in her counter affidavit.

I have examined '**1R12**' and observe that the following provisions thereof are relevant to a consideration of the issue before me:

"*Service Extension Procedure*

1. *The age of retirement of (an) employee is 55 years. However, at the discretion of the management the employee may be given service extensions annually up to 60 years (compulsory age of retirement).* ***Service extension will be given*** *to permanent employees of SLT PLC on their request* ***subject to their performance, discipline and conduct*** *along with the management recommendations based on the company requirements.*

2.1 *All employees will have to retire from service at reaching 55 years. Their services may be extended up to 60 years of age at the sole discretion of the management, which will be the compulsory age of retirement.*

3.4 *Employees who have been punished for severe misconduct will not be eligible.*

3.5 *In the event of a pending disciplinary investigation or inquiry against an employee who is about to retire or on service extension, his/her service period can be extended up to a maximum period of three months with the discretion of the Management. However, in the event an employee is not found guilty at the investigation or inquiry, the Management may consider his/her service extension thereafter."*

Having carefully considered '**P14**', '**P15**' and '**1R12**', it is clear to me that an extension of service from the age of 55 years up to 60 years is not as of right and that the granting of an extension is at the discretion of the Board of Directors of the 1st Respondent. What is critical, irrespective of whether it is '**P15**' or '**1R12**' that is currently applicable, is the fact that an employee who seeks an extension of service must have an impeccable disciplinary record. An extension of service is a privilege afforded to an employee and therefore I cannot subscribe to the view that extensions must be granted even where the employer has serious concerns with regard to the discipline and conduct of an employee.

The above position is reflected in the service extension report of a Senior Assistant Manager marked '**1R12(a)**' where the Petitioner, in her capacity as the Chief Human Resource Officer had made the endorsement that '*you cannot extend her (services) with pending investigations.*'

It is in the above background that I must consider the position of the 1st Respondent. In its limited Statement of Objections, the 1st Respondent has submitted that the Trade Unions of the 1st Respondent had alleged that in 2018, the Petitioner had approved the payment of a sum of Rs. 845,000 to enable two employees of the 1st Respondent to travel to the United Kingdom to attend a seminar, which they claimed *was a clear violation of existing policies, guidelines and procedures in connection with foreign related trainings / visits* – vide '**1R3**'.

The following findings of the Group Chief Internal Auditor (GCIA) contained in his report marked '**1R4**' reveals the concerns of the 1st Respondent with regard to the above payment:

> "*We have observed a clear deficiency of basis in making payments for three officials who are attending for same event as per above (whilst one person is paid LKR 27,739.70 and other two were paid LKR 422,500 each to attend to the same event).*

As per the Accountant/Other Payment, the funds/budget utilised to finance the total cost of LKR 872,739.70 belongs to welfare section (welfare budget).

We have scrutinized the particulars pertaining to foreign visits of union officials and found that company has only incurred the cost of approved incidental allowance of USD 35 per day for each such members in their previous visits. At this occasion, CHRO has approved and paid total of air fare, visa fees and hotel accommodation to Mr. Anura Perera and Mr. Rohan Nissanka instead of paying incidental allowances.

At the current circumstance where company is facing financial difficulties, we could not observe proper business case to sponsor the union members to attend for global event related to union activities by spending 0.9 million.

We have not seen approvals of higher officers such as acting CEO or SLT Group Chairman and only CHRO's approval is available."

By an email dated 21st August 2020 marked '**P17**' [also marked as '**1R14]**', the GCIA had requested the Petitioner to submit her response to the questionnaire that was attached thereto. I have examined the said questionnaire and observe that in addition to the incident referred to in '**1R4**', the explanation of the Petitioner had been called in respect of the following matters:

a) Failing to take action against L.G.R.L Nissanka after he was found guilty by the Magistrate's Court of Panadura for obtaining electricity fraudulently.

b) Misuse of company funds to felicitate the Petitioner for an award that she had received.

c) Payment of an allowance to Mr. Anura Perera for removing posters pasted in public areas.

d) Using a SLT Vehicle although a transport allowance had been paid to the Petitioner.

e) Recruitment of two persons related to the Petitioner.

f) Reinstatement of Mr. Ajantha Balasuriya who had been found guilty for unauthorised usage of electricity.

g) Reinstatement of a SLT employee involved in theft prior to the completion of the investigation.

The 1st Respondent had thereafter issued the Petitioner with the letter dated 15th September 2020 marked '**P21**' requesting the Petitioner to show cause in respect of six charges. Simultaneous to the issuance of '**P21**', the 1st Respondent had informed the Petitioner by '**P16**' that a service extension of six months cannot be granted in view of the "*numerous irregularities that have been elicited though the recently conducted Audit inquiry, which were communicated to you by the Group Chief Internal Auditor on 2nd March 2020, 20th May 2020 and on 21st August 2020, into several matters that you have handled in your capacity as the CHRO of this company."*

It is therefore clear that the Petitioner was not granted her extension in view of the several incidents relating to her discipline and conduct. It is in these circumstances that I must now consider whether the decisions of the 1st Respondent contained in '**P8**' and '**P16**' denying the Petitioner an extension of service until 18th March 2021 is illegal, arbitrary, unreasonable and/or irrational.

I must reiterate that granting of a service extension is entirely at the discretion of the Board of Directors of the 1st Respondent. The decision to reject the request of the Petitioner for an extension has been taken by the Board of Directors and therefore, the said decision is not illegal.

The test routinely applied to determine if a decision is unreasonable or irrational has been set out in **Associated Provincial Picture Houses Limited v. Wednesbury**

Corporation,[1] where Lord Greene defined unreasonableness as '*something so absurd that no sensible person could ever dream that it lay within the powers of the auth*ority.' The famous example of the red-haired teacher who was dismissed due to the colour of her hair, illustrates the high threshold for "unreasonableness" that was expected to justify judicial intervention on this ground.

In **Secretary of State for Education and Science v. Tameside Metropolitan Borough Council**,[2] it was held that:

> "*In public law, "unreasonable" as descriptive of the way in which a public authority has purported to exercise a discretion vested in it by statute has become a term of legal art. To fall within this expression it must be conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt*."

In **Council of Civil Service Unions vs Minister for the Civil Service**,[3] Lord Diplock crystallised *irrationality* as a standalone ground for judicial review.[4] The ground of *irrationality* however was intrinsically linked to *Wednesbury unreasonableness*, and only applied '*to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it*', thus keeping the threshold for judicial intervention still very high.[5]

A common feature in the above cases is that they invite a very low level of judicial scrutiny, where a decision is within the purported "*four corners of the law*". As Lord Bingham has noted, this threshold is "*notoriously high*" and a claimant has a "*mountain*

[1][1948] 1 KB 223 at pages 229-230.
[2] [1977] AC 1014 at page 1064.
[3] [1985] AC 374
[4]The test laid down by Diplock, J has been applied in Sri Lanka – see Sundhakaran v. Bharathi and Others [1987] 2 Sri LR 243, at page 254.
[5]Although the terms, 'irrationality' and 'unreasonableness' are often used interchangeably, irrationality is only one facet of unreasonableness.

to climb."[6] This reaffirms the limited role that Courts can play in exercising judicial review, and the deference shown to the view of the public authority.

An employer expects an employee to discharge his or her duties efficiently and serve the employer with dedication. More so than this however is the requirement that each employee maintains the highest levels of discipline and conduct at all times. The 1st Respondent had granted the Petitioner service extensions on four occasions. However, the circumstances had changed when it came to the final extension with the 1st Respondent having decided to restructure its Human Resources Division by recruiting a Chief People's Officer and thereafter transferring the duties of the Petitioner to the new Officer. Hence, the decision to limit the extension to a period of six months. This is clearly stated in '**P8**', to which, as I have already observed, the Petitioner did not object. The decision in '**P8**' has been taken in accordance with the service requirements of the 1st Respondent and in its best interests. I am therefore of the view that the decision in '**P8**' is reasonable.

The report of the Group Chief Internal Auditor came at the tail end of the above six month period. The 1st Respondent had afforded the Petitioner an opportunity of giving her side of the story to the matters set out in the said report. Having decided to issue a show cause letter, the 1st Respondent could not have ignored the serious concerns relating to the discipline and conduct of the Petitioner and granted the Petitioner an extension of her services until 18th March 2021. Even though the Petitioner had not been found guilty of any misconduct by then, the fact remained that the 1st Respondent had serious concerns with the conduct of the Petitioner. Faced with a similar situation, the Petitioner herself had decided in 2018, at a time when '**P15**' was applicable – vide '**1R12(a)**' - that services of an employee cannot be extended where there are pending investigations. In these circumstances, I am of the view that the decision to retire the Petitioner without granting an extension of service until 18th March 2021 cannot be considered as unreasonable or irrational. It is a decision that a sensible person who had applied his mind to the question to be decided could have arrived at.

[6] R v. Lord Chancellor Ex parte Maxwell [1997] 1 WLR 104 at 109; as referred to in *De Smith's Judicial Review* (Harry Woolf, Jeffery Jowell, Catherine Donnelly, Ivan Hare, *De Smith's Judicial Review* [8th Edition, 2018] Sweet and Maxwell) at page 599.

The Supreme Court arrived at a similar conclusion in **Elpitiya Plantations Limited vs Ceylon Estates Staff Union and Others**[7] when it held as follows:

> " *... the optional age of retirement of the workman was 55 years, and any extension of service was at the discretion of the management. Hence, the workman was not entitled to any extension as a matter of right. Therefore, one cannot blame the appellant for not extending the services of the workman after 55 years, having regard to his unsatisfactory service record.*"

For all of the above reasons, I do not see any legal basis to issue formal notice of this application on the Respondents. This application is accordingly dismissed, without costs.

President of the Court of Appeal

Mayadunne Corea, J

I agree

Judge of the Court of Appeal

[7] SC Appeal No. 70/2002; SC Minutes of 29th January 2004.